UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
NEW YORK BRANCH OFFICE
DIVISION OF JUDGES

SPRAIN BROOK MANOR REHAB, LLC, PINNACLE DIETARY INC., BUDGET SERVICES, INC., AND COMMERCIAL BUILDING MAINTENANCE CORP.
Respondents

and

Case 02-CA-089480
Case 02-CA-142506

1199 SEIU UNITED HEALTHCARE WORKERS EAST
Charging Party

and

LOCAL 713, INTERNATIONAL BROTHERHOOD OF TRADE UNIONS
Party to the contract

LOCAL 713, INTERNATIONAL BROTHERHOOD OF TRADE UNIONS
Respondent

Case 02-CB-095670
Case 02-CB-146895

and

1199 SEIU UNITED HEALTHCARE WORKERS EAST
Charging Party

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DECISION

Statement of the Case

KENNETH W. CHU, Administrative Law Judge. This case was tried in New York, New York, on October 6, 7, 8, 9, 10, December 15, 16, 2014, January 20, 26, March 11, April 13, 14, 15, 20, and 27, 2015. The complaint alleges that Sprain Brook Manor Rehab, LLC (Respondent Sprain Brook), Pinnacle Dietary, Inc. (Respondent Pinnacle), Budget Services, Inc. (Respondent Budget), Commercial Building Maintenance Corp. (Respondent CBM), and Local 713, International Brotherhood of Trade Unions (Respondent Local 713) have engaged in, and continue to engage in, unlawful conduct in violation of Sections 8(a)(5), (3), (2) ,and (1); and Section 8(b)(1)(A) of the National Labor Relations Act (Act).

Procedural History

The initial charge was filed on September 19, 2012,[1] by the charging party union, 1199 SEIU, against Sprain Brook Manor Nursing Home, LLC (predecessor Sprain Brook) (GC Exh. 1aa).[2] The charge was subsequently amended on November 26 and alleged violations of the Act to include Respondents Sprain Brook Manor Rehab, LLC (Sprain Brook), Pinnacle Dietary, Inc. (Pinnacle), nonparty Confidence Management Systems (Confidence), and Commercial Building Maintenance, Corp. (CBM), acting either as joint employers or as a successor (Case 02-CA-089480) (GC Exh. 1y). An amended charge was filed on July 15, 2013, by 1199 SEIU (GC Exh. 1s); and a third amended charge was filed on July 22, 2013, by 1199 SEIU (GC Exh. 10).[3] On July 22, 2013, charging party Union filed a charge against Respondent Local 713 International Brotherhood of Trade Unions (IBOTU) (Case 02-CB095670) (GC Exh. 1q).

The charges were referred to the Regional Director of Region 2 of the National Labor Relations Board (NLRB) for investigation and an order consolidating the charges and a consolidated complaint was issued on July 31, 2014 (GC Exh. 1m).

The complaint alleges that Respondent Sprain Brook violated the Act when it unilaterally discharged unit employees and subcontracted unit work without first providing notice to 1199 SEIU and a meaningful opportunity to bargain over the decision regarding the discharges and subcontracting. The complaint alleges, in turn, that Respondents Sprain Brook, Budget, Pinnacle, Confidence and CBM violated the Act when it failed and refused to recognize and bargain with 1199 SEIU and in implementing unilateral changes in the terms and conditions of the employees without first providing notice to 1199 SEIU and an opportunity to bargain to an agreement or impasse.[4]

The complaint also alleges that Respondent Sprain Brook terminated the employment of three employees because they assisted in union activity and in support of 1199 SEIU and for their refusal to support Respondent Local 713. Moreover, it is alleged that Respondents Sprain Brook, Pinnacle, and Budget provided unlawful assistance to Respondent Local 713 by

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[1] All dates are in 2012 unless otherwise indicated.

[2] The General Counsel exhibits are referenced as “GC Exh.” and the Charging Party exhibits are referenced as “CP Exh.” The Respondents exhibits are referenced as “SB Exh.” for Sprain Brook; “P Exh.” for Pinnacle and “B Exh.” for Budget. Posttrial briefs are identified as GC Br., for the General Counsel; SB Br. for Respondent Sprain Brook, P Br., for Respondent Pinnacle and B Br. for Respondent Budget.

[3] The third amended charge alleged violations of the Act against Respondent CBM.

[4] Par. 7 of the consolidated complaint.

threatening employees to support Local 713; by recognizing Local 713 and entering into a collective-bargaining agreement with Local 713 at a time when 713 did not represent an uncoerced majority of the unit employees; unlawfully deducting and remitting dues and other union benefits to Local 713; and by refusing to recognize 1199 SEIU. Finally, the complaint alleges that Respondent Local 713 violated the Act by accepting such unlawful assistance, recognition and contracting.

The Respondents filed timely answers denying the material allegations in the complaint (GC Exh. 1c; 1d; 1g, and 1k).[5] Party-to-the-contract, Budget Services, also provided a general denial and lack of knowledge in its answer to the consolidated complaint (GC Exh. 2i).

On October 6, 2014, the General Counsel moved to amend the consolidated complaint. The counsel for the General Counsel stated that the motion to amend was to remove Confidence (and SC & BP) as a Respondent and the allegations against them in the amended complaint (Tr. 5-7).[6] Respondents Sprain Brook and Pinnacle subsequently filed their timely answers (Tr. 7, 8). Respondent Local 713 provided a general denial in its oral answer at trial on October 8 (Tr. 227).[7]

On October 8, the counsel for the General Counsel moved to amend the complaint to add Budget Services, Inc. as a respondent. The General Counsel represented that through the testimony of witnesses given during the hearing, the Regional Director determined that there were meritorious allegations against Budget (Tr. 228, 229). Counsel for the General Counsel previously informed counsel for Budget Services on October 7 of her motion to amend the complaint on October 8 to include Budget as a respondent. Budget Services did not object to the resumption of the trial on October 8 but only requested that any motion to amend be scheduled on a date after October 24 (GC Exh. 21).

Inasmuch as a representative for Budget was not present at the October 8 hearing, I instructed the General Counsel to advise counsel for Budget of her intent to file her motion to amend the complaint to add Budget as a Respondent by October 17. The counsel for the General Counsel notified counsel for Budget on October 11(Tr. 233-243).

On October 20, counsel for Budget requested an extension of time to October 29 to file his opposition to adding Budget Services as a respondent and his request was granted. By email dated October 30, counsel for Budget Services represented that Budget Services "…has decided not to oppose the motion made by the NLRB to amend the Complaint." However, in a subsequent conference call on November 3, counsel for Budget represented that he was not aware that substantial evidentiary testimony was taken during the hearing on October 6, 8, 9, and 10. Counsel for Budget repined that he was not present to examine witnesses during those dates and to name Budget as a respondent after testimony was given deprived Budget of its due process rights to examine witnesses. Counsel for Budget was informed that I would recall the witnesses and give him the opportunity to examine the witnesses after his review of the

hearing transcript. However, on November 5, counsel for Budget stated that my offer was not ". . . a viable alternative" and insisted on a de novo hearing or dismiss Budget as a Respondent.

[5] Respondent Confidence did not file an answer.

[6] The Transcript from the hearing is noted as "Tr."

[7] Finding no opposition to the motion to amend, the amended complaint was moved into the record on October 10 (GC Exh. 2a) along with the answers to the complaint (GC Exh. 2b [Sprain Brook], 2c [Pinnacle]; Tr. 591).

On November 17, I granted the General Counsel's motion to include Budget Services, Inc. as a Respondent in this action. My order noted that Budget Services had been designated as a party-in-interest since the complaints were consolidated and had an opportunity to appear at the start of the trial on October 6. At the time, counsel for Budget never objected to starting without his presence and did not object to his nonappearance until November 5. I reiterated that I would recall the witnesses for Budget to examine and to present evidence (GC Exh. 2k, 2l).[8] The second amended complaint to include Budget Services as a Respondent supersedes the first amended complaint and is the controlling pleading in the case (GC Exh. 2c).[9]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties,[10] I make the following

Findings of Fact

I. Jurisdiction and Labor Organization Status

The Respondent Sprain Brook Rehab, LLC, a limited liability corporation, with an office and place of business in Scarsdale, New York, has been engaged in the operation and maintenance of a nursing home. The Respondent Sprain Brook Rehab annually derives gross revenues in excess of $100,000 and purchases and receives goods and services valued in excess of $5000 directly from suppliers located outside the State of New York.

At all material times, Respondent Pinnacle has been a domestic corporation with an office and place of business in Newburgh, New York, and has been engaged in providing food services. It annually provides services valued in excess of $50,000 for enterprises directly engaged in interstate commerce, including Sprain Brook Rehab, which is directly engaged in interstate commerce, as set forth in subparagraph 3(a)(i) of the complaint.

At all material times, Respondent Budget has been a domestic corporation with an office and place of business in Brooklyn, New York, and has been engaged in providing staffing services. The Respondent Budget annually provides services valued in excess of $50,000 for enterprises directly engaged in interstate commerce, including Sprain Brook Rehab, which is directly engaged in interstate commerce, as set forth in subparagraph 3(a)(i) of the complaint.

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[8] The motion by the General Counsel to include Budget as a Respondent and my subsequent order granting the motion was inadvertently not submitted at the time my order was issued. The General Counsel, by letter dated June 17, 2015, request that the motion and order be included in order to complete the record. The counsel for Budget Services objected to the inclusion of the motion and order. Upon my review, I agree with the General Counsel that the inclusion of the motion and order is necessary to complete the record since the documents reflects more in detail than my brief summary noted above. The substantive arguments regarding the merits of including Budget Services as a Respondent was fully addressed and considered during the trial. The submission of the motion and order is merely a ministerial function to complete the record.

[9] On April 6, 2015, I granted the motion of the General Counsel to consolidate Case 02-CA-142506 (GC Exh. bb) and 02-CB-146895 (GC Exh. ff) to the complaint (GC Exh. 2hh).

[10] Charging Party 1199 SEIU and Respondent Local 713 did not file post-hearing briefs. On September 9, the General Counsel request to file a supplemental brief in light of the Board's decision in *BFI Newby Island Recyclery*, 362 NLRB No. 186 (2015), regarding *Browning-Ferris*. The request was granted on the same date with an October 20 deadline to submit supplemental briefs by the parties.

At all material times, Respondent CBM has been a domestic limited liability corporation with an office and place of business place of business in Syosset, New York, and has been engaged in providing housekeeping and cleaning services. The Respondent CBM annually provides services valued in excess of $50,000 for enterprises directly engaged in interstate commerce, including Sprain Brook Rehab, which is directly engaged in interstate commerce, as set forth in subparagraph 3(a)(i).

I find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, the Charging Party Union 1199 SEIU has been a labor organization within the meaning of Section 2(5) of the Act. At all material times, the Respondent Union Local 713 IBOTU has been a labor organization within the meaning of Section 2(5) of the Act.

II. Credibility Determinations

The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, and the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, above.

III. The Alleged Unfair Labor Practices

a. The Respondent Sprain Brook Manor Rehab, LLC

1. Background

The predecessor Sprain Brook operated a healthcare facility and was owned by Robert Klein and Henry Book, each holding a 50 percent membership stake in the home. Robert Klein (Klein) testified that he brought Sprain Brook in 2003 and was involved in the day-to-day activities of the nursing home through September 2012 (Tr. 1751, 1752). In July 2005, 1199 SEIU began an organizing campaign at the facility. The Union filed a petition for representation in August 2005 and in June 2006, after a Board-conducted election, 1199 SEIU was certified as the exclusive collective-bargaining representative of the following unit of employees

> All full-time and regular part-time and per diem non-professional employees including license practical nurses, certified nurses' aides, geriatric techs/activity aides, house-keeping employees, laundry employees/assistants, dietary aides, and cooks employed by the Employer at its facility located at 77 Jackson Avenue, Scarsdale, NY, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.

The certification was contested by predecessor Sprain Brook and the NLRB enforced the certification on September 29, 2006, and found that 1199 SEIU continued to be the exclusive collective-bargaining representative in subsequent decisions. The September 29, 2006 Board decision ordered the predecessor Sprain Brook to bargain with 1199 SEIU and if an understanding is reached, embody the terms and conditions of employment of such employees

in a signed agreement.

On December 26, 2007, the Board adopted the administrative law judge's findings that predecessor Sprain Brook violated Section 8(a)(3) of the Act, among other violations, by discharging Catherine Alonso and Alvin Nicholson and disciplining Clarissa Nogueira.[11] On April 26, 2013, the Board adopted the judge's findings that predecessor Sprain Brook, among other violations, threatened employees if they sought union assistance, suspended and discharged employees, unilaterally changed wages, hours and other terms and conditions of employment of the bargaining unit without first providing notice, and upon request, to bargain with the Union.[12]

2. The Sale of Predecessor Sprain Brook

In 2009, predecessor Sprain Brook entered into a purchase agreement with Respondent Sprain Brook to sell the nursing home. The sellers of predecessor Sprain Brook were Klein and the estate of Henry Book, each owning a 50 percent share of the facility. The buyer of the nursing home was LNS Acquisition (LNS). The sales agreement was executed on August 18, 2009, and was contingent upon the approval of the sale by the New York State Department of Health (DOH). The purchase price for predecessor Sprain Brook was $7,800,000 dollars (GC Exh. 7).

Allen (Artie) Stein (Stein) is the current managing partner of Respondent Sprain Brook (Tr. 51). Stein testified that Lazar Strulovitch (Strulovitch) and Leopold Schwimmer were the members (partners) of LNS. Stein denied that he was a member of LNS at the time of the sale and insisted he was not involved in the initial sales agreement (Tr. 61, 1719, 1720). Stein testified that another partner, Sam Strulovitch, the brother of Lazar were the two initial members of LNS. According to Stein, Sam sold his share to Lazar and then brought in Stein and Schwimmer (Tr. 69, 70). The sales agreement contradicted Stein's testimony and identified the initial LNS members as Sam Strulovitch, Lazer Strulovitch, Moses Friedman, Allen Stein, and Leopold Schwimmer (GC Exh. 7 at 15).

The sales agreement gave LNS "unrestricted right to assign" the sales agreement. The sales agreement also provided for an "adjustment date" of January 1, 2007, wherein Respondent Sprain Brook would be "…entitled to any profit accrued with respect to the period from and after the Adjustment Date and shall bear any loss with respect to the period from and after the Adjustment Date" (GC Exh. 7 at 5).

On November 17, 2009, LNS assigned all rights, title and interest in its purchase agreement to Respondent Sprain Brook Manor Rehab, LLC. The assignor on behalf of LNS was Lazar Strulovitch. The assignee for Respondent Sprain Brook was also Lazar Strulovitch (GC Exh. 8). Stein testified that the sales agreement was assigned by LNS to Sprain Brook Manor Rehab, LLC (Tr. 61-65). The record shows that Stein was also an initial member of Respondent Sprain Brook when the sales agreement was assigned (GC Exhs. 10 and 11).

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[11] The prior discipline of Nicholson and Nogueira becomes apparent as relevant background information through the course of their testimony at this hearing.

[12] My summation of the factual background is distilled from the following cases: *Sprain Brook Nursing Home, LLC*, 348 NLRB 851 (2006); 351 NLRB 1190 (2007); 359 NLRB No. 105 (2013). Because of *Noel Canning*, the Decision and Order in *Spring Brook Nursing*, 359 NLRB No. 105 was vacated and reissued as *Sprain Brook Manor Nursing Home, LLC,* 361 NLRB No. 54 on September 29, 2014, and affirmed the judge's rulings, findings, and conclusions and adopted the judge's recommended order to the extent and for the reasons stated in the September Decision and Order.

Stein stated that there were three partners in Respondent Sprain Brook, whom he identified as Strulovitch with the majority ownership at 57 percent and Schwimmer with 13 percent ownership and himself (Tr. 64). The record actually shows four owners of Respondent Sprain Brook, to include Lazer Strulovitch at 53.125 percent, Stein at 25 percent, Schwimmer at 12.5 percent and Friedman at 9.375 percent (GC Exh. 9 at 2).

Shortly after the assignment of the sales agreement, Respondent Sprain Brook applied for a certificate of assumed name to do business as Sprain Brook Manor Nursing Home (GC Exh.13). On November 25, 2009, Respondent Sprain Brook now doing business as Sprain Brook Manor Nursing Home (SBMNH), filed a Certificate Of Need (CON) application with the DOH seeking approval from the NYS Public Health Council to establish itself as the new operator of SBMNH (GC Exh. 9).

The General Counsel believes that the date of ownership was transferred to Respondent Sprain Brook on June 15. Under the terms of the sales agreement, the closing date would take place on ". . . a date not more than ninety (90) days following the receipt . . .of DOH's final non-contingent approval of the Application for Establishment . . . duly authorizing to operate the Facility" (GC Exh. 7 at 4). The application for Respondent Sprain Brook's operation of the nursing facility was approved on April 6, 2012 (GC Exh.14), and the Medicare enrollment application was filed on June 26, 2012.

The Respondent Sprain Brook maintains that ownership transferred on September 13. Stein testified that Respondent took ownership on September 13 (Tr. 61, 62, 1715, 1716, 1720-1722). Stein testified that it took 16 to 18 months for approval of the certificate of need application due to the government bureaucracy. Stein explained that that the closing was further delayed because once the CON application was approved and the Medicare enrollment was filed, he still needed to apply for a mortgage.

The September 13 date of the transfer of ownership is disputed by the General Counsel. I find it reasonable to conclude that the date of the transfer of ownership was on June 15, 2012. The certificate of need was already approved by April. The Medicare enrollment application indicated that Stein was the managing member of Respondent Sprain Brook. Further, Stein signed an electronic funds transfer agreement attesting to the change of ownership on June 15, 2012, and authorizing the transfer of funds between Respondent Spain Brook and his financial institute (GC Exh. 15).

Stein said he is the only managing partner of the facility after the transfer of ownership to Respondent Sprain Brook (Tr. 136, 137). Stein testified that Lazar Strulovitch was not involved in the management and no decisions were made by him regarding the operations of the nursing facility (Tr. 2731, 1732).[13] Stein also denied that Moses Strulovitch is a managing partner of Respondent Sprain Brook. Stein identified Moses as the son of Sam Strulovitch and is only involved in the marketing aspects of the nursing home (Tr. 69, 70).

[13] Stein insisted that it was not accurate that the cover letter prepared by his attorneys for the CON application stated that Strulovitch was also a managing partner of Respondent Sprain Brook (Tr. 136, 137).

3. The Relationship Between Respondent Sprain Brook and Predecessor Sprain Brook

The General Counsel maintains that Respondent Sprain Brook has been managing the nursing facility since the 2009 sales agreement. Stein denied that he had a controlling interest in predecessor Sprain Brook. He said that predecessor Sprain Brook was owned by Klein and Book. According to Stein, Klein wanted to sell the nursing home due to back taxes and his inability to continue running the home. Stein also inferred that there was hostility between Klein and the Book estate after Book passed away. Stein testified that he was persuaded by Strulovitch to go in as a partner to buy out Klein and the Estate of Book. Stein testified that he was invited by Klein in 2009 to acclimate himself in the operations of the nursing home because he had no working experience in managing a nursing home and he wanted to learn about the business. Stein testified that he went in to "look around" and spoke to residents. He denied he was involved in the paperwork or finances of the nursing home operations until 2012 (Tr. 50-54).

However, the record shows that Stein signed Schedules 1A and 13B in his Certificate of Need (CON) application on November 17, 2009, as a member of LNS (GC Exh. 9 and 12) and represented to the NYS DOH in his CON application that he has been the comptroller of Sprain Brook Manor Nursing Home for the past 10 years (GC Exh. 6; Tr. 66). Stein also admitted to a degree of authority and autonomy that was granted by Klein to "manage this; I should manage that; I should take care of stuff," although he insisted that everything had to go through Klein (Tr. 53, 54, 1712, 1713). Stein also admitted that he attended a few bargaining sessions with 1199 SEIU but insisted that he was there only at the direction of Klein and only represented Klein with certain aspects of the bargaining (Tr. 188-191).

Klein testified that he was the owner of predecessor Sprain Brook since 1973 and did not transfer ownership of the facility until September 2012. Klein stated that he managed the day-to-day operations of the nursing home during his ownership and that he denied granting any authority to Stein to act on his behalf on labor/employment relations matters (Tr. 1751-1755).

Gregory Speller (Speller), who was and is the vice president of the 1199 SEIU Nursing Home Division, testified that he was involved in the bargaining sessions for a new contract with predecessor Sprain Brook from July 2008 through June 2011. In contrast to Klein's testimony, Speller testified he never met Klein in any of the bargaining sessions (Tr. 720) and related that Strulovitch and Stein were the ones intimately involved in the negotiations. Speller recalled that there were 16 or 17 bargaining sessions and that Klein never attended a session. [14] Speller further testified that he never recalled Stein or Strulovitch telling him that any matters negotiated needed to be approved by Klein as part of any final agreement (Tr. 744).

Speller met Moses Strulovitch at a bargaining session as early as 2008 and Strulovitch was introduced to him as "somebody who was helping to manage Sprain Brook and also a prospective buyer..." Speller asked Strulovitch for the closing date for the sale of the nursing home and was informed by Strulovitch that the State approval of the sale was a lengthy process and would take time. According to Speller, Strulovitch also stated that he wanted a fair contract and a good working relationship with the Union (Tr. 678-684).

Speller also met to Stein during a bargaining session held on July 14, 2009. Speller said that Stein was introduced as someone working with Strulovitch to manage the nursing home

[14] Speller's Board affidavit stated that Stein and Strulovitch had the authority at the table (to negotiate) but had to confer with Klein (Tr. 744, 745).

and as one of the prospective buyers of the home. Speller said that he met Stein again when he was invited by Stein to a meeting at a restaurant on September 16, 2009, to continue bargaining over a contract. Stein repeated that he wanted a good working relationship with the union but that there were financial constraints. Stein said to Speller that he would get Israel Nachfolger (Nachfolger) to contact Speller on the following day to continue discussions on a bargaining contract. When contacted by Nachfolger, Speller was informed by Nachfolger that he has experience working with 1199 SEIU at other nursing facilities. The parties met at a bargaining session on September 22, 2009, and Speller again met Stein and Nachfolger during this session. Subsequently Speller and Nachfolger exchanged emails on September 23 as a follow up on the bargaining. Although Nachfolger was introduced to Speller by Stein, his email address also stated "The Pinnacle Group." Speller did not know why Nachfolger had the Pinnacle Group designation under his name (Tr. 688-694; GC Exh. 42).[15]

Speller testified to a subsequent bargaining session with Stein and Nachfolger on October 19, 2009. According to Speller, Stein and Nachfolger presented a counter proposal on October 19 (GC Exh. 43). Speller testified that it was his understanding that the Union was negotiating with the buyers of the Sprain Brook facility. Respondent Sprain Brook objected to the submission of the counter proposal (Tr. 694-701).[16]

Speller stated that the next bargaining session occurred in August 2010 and he was informed that a certificate of need was filed by the buyers of Sprain Brook with the New York State Health Department. Speller recalled again asking about the closing date for the sale. There were also discussions during this session and one in December 2010 about negotiating the subcontracting of the laundry department (GC Exh. 44). The Union opposed the subcontracting and ultimately, the Union agreed to have the one remaining laundry employee, Clarisse Nogueira, reassigned to the housekeeping department, with no change in her work hours or compensation, thereby preserving her employment (Tr. 701-708).

On June 2, 2011, there was one final bargaining session between the Union and with Stein and Strulovitch representing the employer. Spellers again ask for the status of the sale of the facility and for a closing date, but did not receive an answer. The parties never reached a negotiated contract, but had continued to discuss the resolution of several unfair labor practice violations found against the nursing facility (as noted in fn. 12) (Tr. 706-711).

Clarisse Nogueira (Nogueira) has been employed at the nursing home since 1981 and held various positions during her career. Nogueira started as a housekeeper and worked as a CNA in 1985 and at some subsequent point in time, she was reassigned to the laundry department. In 2011, Nogueira returned to housekeeping after the laundry department was outsourced and closed by the facility. Nogueira was the lead delegate for SEIU 1199 since 2006 until her discharge in October 2012 (Tr. 254-260).

Nogueira testified that she observed Stein with Klein in 2009 walking around the nursing facility but she did not know who Stein was at the time. Nogueira said that as the lead union delegate, she attended every bargaining session and was with Speller when they were formally introduced to Stein at one of the sessions. She did not recall the time frame when she was

[15] On cross examination, Speller testified that he addressed Nachfolger as "Israel Nachfolger/Pinnacle Group/Current Bargaining Representative for Sprain Brook Manor" (GC Exh. 42; Tr. 755).

[16] Respondent Sprain Brook objected over the introduction of the GC Exh. 43 because the allegation of bad-faith bargaining was not made part of the complaint. The objection was overruled not for the purpose to show bad-faith bargaining, but rather, the document may help establish the actual successorship date (Tr. 700, 701).

introduced to Stein but recalled that Stein told the union bargaining team that he "…was taking over the facility . . . and he would be in negotiations for Sprain Brook" (Tr. 272-273). Nogueira testified she also advocates, as the union delegate, on behalf of unit employees. Nogueira recalled an occasion when she met with Stein and Moses Strulovitch in November 2010 regarding the discipline of another employee. Nogueira also had another occasion to speak to Stein during this same time frame when she questioned Stein's criticism of the ability of another housekeeper to clean the facility windows. According to Nogueira, Stein responded "You don't tell me what to do. I'm your boss." Nogueira said that the two incidents and his presence at the bargaining table indicated to her that Stein was and has been managing the Sprain Brook nursing facility since 2009 (Tr. 274-279).

b. The Respondent Sprain Brook's Contracts with Confidence and CBM

Respondent Sprain Brook executed a contract on September 16, 2012, with Confidence Management System (Confidence) effective on September 16, 2012, through December 31, 2013. The contract was signed by Stein. Stein testified that his health was not well during this time frame and was away from managing the nursing home from time to time. Stein stated that Shlomo Mushell (Mushell), the administrator for Sprain Brook, assisted in the management of the facility while Stein was absent for health reasons (Tr. 171-177)[17] Under the contract, Confidence would provide the housekeeping services and all the necessary management, which includes a housekeeping director and regional manager, to oversee the housekeeping operation. Confidence also provided the housekeeping and cleaning supplies (GC Exh.17).[18]

Abraham Grossman (Grossman), the payroll administrator for Confidence,[19] stated that the payroll records reflected the names of Confidence employees performing housekeeping services for Respondent Sprain Brook (GC Exh. 78). Grossman testified that the Confidence employees most likely began working at Sprain Brook on September 16, 2012, and their last pay period was on June 16 through 29, 2013 (Tr. 1288-1294). Confidence no longer has a working relationship with Sprain Brook after June 2013 (Tr. 1289-1294).

The payroll was generated by SC & BP Services, Inc. Grossman testified that SC &BP Services was a payroll service company for Confidence. The names on the payroll during Confidence's contractual relationship with Respondent Sprain Brook included a majority (if not all) of the housekeeping and maintenance employees previously employed by Respondent Sprain Brook (GC Exh. 78).

Respondent Sprain Brook replaced Confidence and signed a contract with Commercial Building Management Corp. (CBM), effective from July 1, 2013, through July 1, 2014. The contract with CBM was signed by Moshell on behalf of Stein. Stein did not know why Confidence was replaced by CBM (Tr. 176-178). CBM now supplied the necessary labor, supervision, materials and equipment to all general cleaning services (GC Exh. 18). John Weiss (Weiss), identified as an individual working in clerical and payroll for CBM, testified that Respondent Sprain Brook was a former client of CBM. Weiss testified that he generated the payroll records of CBM employees and that the payroll report (GC Exh. 77) reflected the number of CBM employees working for Sprain Brook from July 1, 2013, through September 20, 2013

[17] Moshell was a consultant to predecessor Sprain Brook in 2011 and became the facility's administrator in September 2011. See, *Sprain Brook Nursing Home, LLC*, 359 NLRB No. 105 at slip op. 5 (2013).

[18] Confidence was not named as a Respondent after entering into a settlement with the General Counsel.

[19] Grossman testified that he was responsible for generating the payroll records for the employees of Confidence.

(Tr. 1282-1287).[20] Again, a majority of the housekeeping and maintenance employees were formerly employed by Respondent Sprain Brook and nonparty Confidence.

c. The Respondent Sprain Brook's Contract with Respondent Pinnacle

Respondent Sprain Brook executed a contract with Respondent Pinnacle on June 27, 2012, with an effective of August 1, 2012 (GC Exh. 16). The contract was signed by Aaron Weiss and Susan St. Pierre, president and CEO for Pinnacle were on the signatory lines of the agreement on behalf of Pinnacle. Stein signed on behalf of Respondent Sprain Brook. Stein signed above his "printed name" line and not on his signature line. The contract granted exclusive rights to Pinnacle to manage and operate the dietary department at the facility. Pinnacle provided all the necessary management, food, and supplies to perform the food service operations at the facility. The contract clearly stated that Pinnacle shall process the payroll for the registered dietitians, food service director, and the assistant food service director and to assume payroll and benefit responsibilities for the facility's nonmanagement dietary employees, including the responsibility of recruitment, employment, promotion, layoff, termination of all dietary employees.

Under the service contract, Pinnacle will invoice Respondent Sprain Brook on a monthly basis for expenditures incurred by Pinnacle in the management and operation of the dietary department at the rate of $23.72 dollars per patient. A particular expenditure item included the salaries and benefits for the nonmanagement staff. The contract also states that Respondent Sprain Brook and Pinnacle recognize the nursing home as a nonunionized facility and both parties shall be jointly responsible for union negotiations of the dietary employees at the facility. Any negotiated increases in employees' benefits shall be the responsibility of the "Facility" (Respondent Sprain Brook) and the increase amounts shall be reflected in the monthly invoicing to Respondent Sprain Brook by Pinnacle (GC Exh. 16 at Exh. I). Pinnacle never engaged in negotiations with a union, either separately or jointly with Respondent Sprain Brook.

Anthony Scierka (Scierka) testified as the CEO of Pinnacle. Scierka said that Pinnacle is affiliated with Triple A Supplies, Inc. and is owned by Aaron Weiss. He indicated that Pinnacle is in the business of dietary services, food procurement, budgeting and management services primarily to health care facility. He states that Pinnacle only provides management staff for oversight of operations. Scierka, as the CEO, was familiar with the contract. He said that Respondent Sprain Brook contracted with Pinnacle to provide management oversight of the Sprain Brook facility in fall 2012. Scierka said that in accordance with the contract, there was a rate for the services provided by Pinnacle to Sprain Brook. One of the items is "non-management dietary labor salary." The standard rate that Pinnacle would invoice Respondent Sprain Brook was at $23.72 per patient (P Exh. 6). Scierka said that Pinnacle would invoice Sprain Brook for the clinical services in accordance with the contractual rate and then pay the vendors for the contracted items, like food, disposables and any other items rendered by the vendors.

Scierka insisted that Pinnacle, under the contract, did not provide any non-management employees in the dietary and cook department. He testified that the labor was provided by Budget Services. For the nonmanagement labor cost, Budget Services invoices are sent to Pinnacle for payment. The labor cost that Budget Services incurred at Sprain Brook would also include union dues, health benefits, workers' compensation, and other employee benefits (Tr.

[20] Respondent Budget objected to the submission of CBM payroll records because Weiss merely generated the payroll report and did not input the payroll data. I overruled Budget's objection and stated that any inaccuracies to the payroll report could be proffered by Budget.

1025-1035, 1073-1075; P Exh. 7).[21] The employee benefits were based upon the collective-bargaining contract between Budget Services and Local 713. Scierka stated that the invoices from Budget Services were processed by his staff and he approved the payments. He did not recall if the first invoice was received from Budget on October 12 (P Exh. 7). Scierka stated that Pinnacle was not part of the bargaining process and is not a party to the contract between Budget Services and Local 713 (Tr. 1034-1036).

Scierka stated that Pinnacle manages the dietary staff at Sprain Brook but the non-management staff was not employed by Pinnacle. He stated that Pinnacle provided a dietary director and an assistant director to the Sprain Brook facility. He did not recall if any other managers were provided by Pinnacle under the contract (Tr. 1102). Scierka testified that the Pinnacle managers oversee the staff hired by Budget to work in the dietary department. For example, Scierka states that if a dietary manager observes a health violation or infraction, there is a Budget cosupervisor that would conduct any progressive discipline on the employee. Scierka believe that any supervisor or manager, including the Pinnacle director and assistant director has the authority to issue discipline to a nonmanagement dietary employee working for Respondent Budget Services at Sprain Brook (Tr. 1065-1068, 1110-1111).

Crystel Ploschke (Ploschke) testified that she has been the HR assistant with Pinnacle since 2011. Ploschke similarly testified that Pinnacle contracts professional staff with nursing and rehabilitation centers and provides food service directors, regional staff dieticians, and assistant food service directors to various facilities, including Respondent Sprain Brook. (Tr. 1585-1589).

Ploschke explains that the dietary aides and cooks were hired by Respondent Budget Services and they are all Budget employees. The hours worked for paycheck purposes are provided to Pinnacle from Randy Nordella, the kitchen manager. In turn, she reviews the timesheets and then forwards the time and attendance records to Budget. All the time records, including vacation, sick leave, and other accrued hours are obtained through the kitchen manager and forwarded to Budget after her review of the information. Ploschke states that Budget would cut the paycheck for its employees once the time and attendance information is processed. Ploschke states that Budget is responsible for getting the checks to the employees. Ploschke noted that on occasions, Pinnacle would retain blank Budget checks to issue to employees, like during the Jewish Sabbath or in a situation when a payroll check is missing. Ploschke states that Budget invoices Pinnacle for all employee labor deductions, such as workers' compensation, disability benefits and union dues. With regard to union dues, Ploschke states that she has been receiving the invoices from Respondent Budget for the Local 713 dues since February 2013 (Tr. 1597-1623).

Ploschke further stated that as the HR assistant, she is familiar with the collective-bargaining agreement between Budget and Local 713. Ploschke had experienced issues with Local 713 and remembered occasions when she intervened regarding union benefits and the nonpayment of union dues by Respondent Budget. Ploschke had worked closely with Shaina Fekete from Budget Services regarding the proper deductions for union dues, raises for employees, and other payroll issues (Tr. 1629-1667; GC Exh. 123, 124).

[21] I would note that there were two contracts between Pinnacle and the Sprain Brook entities. The first contract (GC Exh. 16) was between Weiss for Pinnacle and Stein on behalf of the Sprain Brook facility on June 27. The second contract referenced by Scierka was signed on September 13 between Weiss for Pinnacle and Stein as president of Respondent Sprain Brook (P Exh. 6).

With regard to any union related expenses, such as dues and the health and welfare fund deductions, Ploschke stated that Pinnacle receives a monthly invoice from Local 713 and Pinnacle pays the invoice and forward the invoice to Budget. This is consistent with an invoice provided by the General Counsel (GC Exh. 123) that shows a Local 713 invoice sent to Respondents Sprain Brook and Pinnacle. Pinnacle pays the union invoice and sends the invoice to Budget. Budget, in turn, includes the union invoice along with any other expenses that is sent to Pinnacle for payment. Ploschke testified that she does not know how Pinnacle is reimbursed for the union invoices. Ploschke states that Pinnacle is not a party to any collective-bargaining agreement with Local 713 or any other union (Tr. 1665-1674).

d. The Respondent Sprain Brook's Contract with Respondent Budget

The contract between Respondents Sprain Brook and Budget states that Budget will provide all services to the nursing facility in the areas of the recreation department, CNA, and LPN personnel. The contract specifically states that Respondent Sprain Brook shall not be required to hire employees to assist Budget to perform the (CNA and LPN) services. Under the contract, Budget was responsible for its employees' wages, insurance, payroll taxes, unemployment insurance, disability benefits coverage and workers' compensation, and any other employee benefits provided under the contract. The payments of such benefits would be provided from Budget's own accounts. In consideration, Budget invoiced Respondent Sprain Brook on a weekly basis at a rate of 15 percent above gross payroll of the contractor's employees on an agreed upon payment schedule. The contract further states that Respondent Budget retains

> [t]he authority to hire, terminate and discipline the personnel (LPN and CNA) provided under this agreement. However, the client (Respondent Sprain Brook) retains the right to refuse to permit services performed herein by any of the contractor's employees if the client (Respondent Sprain Brook) has not authorized the services of such employees or considers such employees unqualified to provide such services or determines that the services being provided are not to the Client's satisfaction…

The contract commenced on September 16, 2012, and terminated on December 31, 2012, and would automatically renew on January 1 of each year unless otherwise amended or modified by the parties. The contract was signed by Herschel Weber (Weber), the owner of Budget and Stein (GC Exh. 19).

William Halverstam (Halverstam) testified that he was and is the risk manager for Brand Management and that Budget Services is one of Brand's affiliates. Halverstam states that both companies are under the ownership of Herschel Weber. Halverstam was examined by the General Counsel as a witness in response to a subpoena duces tecum issued to Budget. The subpoena from the General Counsel sought Budget's documents on employee applications, work schedules, personnel files, employer handbooks, personnel policies, supervisors and managers information, among other items of Budget employees working for Sprain Brook. Halverstam testified that Budget has no employees and therefore, there were no employment applications, work schedules, employer handbooks, policies, personnel files, union checkoff information, nor information on managers and supervisors working at Sprain Brook that would be responsive to the subpoena (Tr. 1131-1140).[22]

Halverstam denied knowledge that Budget is a party to a collective-bargaining agreement with a labor organization and such documents do not exist in response to the

[22] For example, Halverstam testified "We don't have any (Budget) Employees, per say (sic). Our Clients have the Employees submit an application. We don't have any employment applications" (Tr. 1139).

subpoena (Tr. 1146, 1147). Halverstam denied knowledge as to why Budget Services paid the invoices that Respondent Local 713 charged to Respondent Sprain Brook and Pinnacle (Tr. 1162-1168; GC Exh. 74). Halverstam also denied knowing about any labor recognition agreement between Local 713 and Budget Services (GC Exh. 55) and denied why certain employment applications were captioned with Budget's name as the employer. He surmised that the documents were not generated by Budget, but rather by Pinnacle (Tr. 1165-1168; P Exh. 3, 4, and 5).

Halverstam stated that Budget is a PEO (professional employer organization) and provides the paperwork, such as payroll checks, W-2s, worker's compensation, payroll taxes, and other such manners to Respondent Sprain Brook as well as to 10-12 other healthcare facilities. Halverstam reiterated that Budget has no employees and only Brand Management employs workers to process the payroll information and paperwork (Tr. 1142).

Weber testified as the owner of Budget Services and to 10-12 other PEOs. Weber insisted that Budget Services only provide payroll services to Respondent Sprain Brook and categorically denied providing any other services to Sprain Brook (Tr. 1295-1298). Weber explained Budget would receive the number of hours an employee worked for Sprain Brook and Budget would process the paychecks (Tr. 1298-1300).

However, in subsequent testimony, Weber testified that Budget did in fact employ the LPN, CNA, and housekeeping staff[23] working for Sprain Brook, which directly contradicted his earlier testimony and the testimony provided by Halverstam. Weber stated that the nursing staff were Budget employees but denied hiring them. Weber testified that "Sprain Brook sends us the employee and we put them on our payroll and they become our employees." Weber also denied that these employees were supervised by Budget and stated that Budget did not employ any supervisors at Sprain Brook (Tr. 1304–1305, 1341).

Effective on or about October 1, 2014, Respondent Sprain Brook entered into a second contract with Respondent Budget. With this contract, Budget replaced CBM. It was allegedly conveyed by Mushell to the staff that the contractor was changed because CBM could not make its payroll of the employees on time (Tr. 1526, 1527; GC Exh. 81).[24] The housekeeping employees were required to complete a new Budget job application and union enrollment paperwork with Local 713 in order to continue working at the Sprain Brook facility.

e. The Discharge and Rehire of Sprain Brook Employees

The General Counsel argues that Respondent Sprain Brook became a successor to the predecessor on June 15, 2012. Respondent Sprain Brook announced the change of ownership on September 12, 2012. On that date, predecessor Sprain Brook informed all of its employees by letter of the change of ownership, effective September 13 and that their positions with the nursing home had been terminated effective on September 12. The letter was addressed to the housekeeping and maintenance staff; nursing staff; and the dietary staff. The letter informed the employees that Stein would be taking over as the managing partner. The letter was signed by Robert Klein (GC Exhs. 22(a)-(c)).

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[23] Respondent CBM's contract for housekeeping and maintenance services was replaced with a contract entered between Respondent Sprain Brook and Respondent Budget Services, effective October 1, 2014 (GC Exh. 81). No explanation was proffered by Respondent Sprain Brook for changing the housekeeping contract.

[24] A copy of the agreement between Sprain Brook and Budget over the housekeeping functions was unobtainable by the General Counsel. GC Exh. 81 reflects payroll records indicating that the housekeeping employees were been paid by Budget by October 2014.

On the same date, Allen Stein, as the "new owner/operator of Sprain Brook Manor Rehab, LLC" announced by letter to the housekeeping and maintenance employees that arrangements had been made for them to meet with a representative from Confidence, a housekeeping and supply company, for immediate rehire without interruption of their current work schedule. A similar letter was provided to the dietary employees. Stein announced to the dietary employees that a representative from Respondent Pinnacle, a dietary service company, was available to discuss their immediate rehire under their current work schedule. With regard to the nursing staff, Stein announced by letter that Respondent Budget had been subcontracted and would rehire all CNAs and LPNs at their current wage rate if they choose to accept the job offer from Budget (GC Exhs. 23 (a)-(c)).

The universal reaction of the Sprain Brook employees was one of shock, surprise and disappointment. Vernon Warren (Warren) testified that he has been employed as a dietary aide at Sprain Brook since 2001 and also serve as a union delegate since 2005. Warren testified that on September 12, the Sprain Brook administrator, Shlomo Mushell, met the dietary staff in the dining room at approximately 2:15–2:30 and presented the dietary staff with two envelopes. The first envelop dated September 12 addressed the dietary staff and informed the employees that Robert Klein was no longer the owner/operator of Sprain Brook Manor Nursing Home and effective September 13 , 2012, Stein will be the managing partner of the facility. Warren was informed of his discharge in the same letter (GC Exh. 22b). Warren received another letter in the second envelope dated September 12 from Stein informing him that he was the new owner and arrangements had been made for him to meet with representatives from Pinnacle Dietary ". . . for the opportunity for immediate rehire" and his current work schedule will continue without interruption (GC Exh. 23b).

The employees were confused as to the identity of their new employer. For example, Warren testified that although Stein said he was the new owner of the facility, Mushell informed the dietary staff that Pinnacle will be hiring the dietary aides at $10 dollars per hour and that anyone interested would have to complete a new job application with Pinnacle. Warren completed his job application that day (Tr. 42–436; GC Exh. 33). Warren said Klein told the workers that Pinnacle would be hiring the dietary staff, but the job application stated

Employment Application
Budget Services, Inc.
129 South 8th Street
Brooklyn, New York 11211

Warren insisted that it was a Pinnacle representative that distributed the job applications, but did not recall the name of the individual. He said that the Pinnacle representative wore a purple and black uniform with the Pinnacle logo. Warren said that after he completed the job application, he was handed a purple Pinnacle uniform and a black apron with the logo "Pinnacle Dietary" on the shirt. Warren recalled that all of the dietary staff received the same Pinnacle uniform.[25] He said there were 12 dietary staff employees on September 12 and only three decided to accept the job offer by Pinnacle.[26] Warren said that the cooks and supervisor

[25] Warren also signed a time card report for his paycheck. He testified that he punches in and out of a time clock when he starts and ends his work shift. The timecard report is captioned "Payroll Group Budget dba Pinnacle Dietary/Employee Group: PINNACLE DIETARY" (GC Exh. 35, Tr. 459).

[26] Warren had initially testified about his knowledge with the morning shift. On direct examination by the counsel for 1199 SEIU, Warren believed that other dietary aides made have also been rehired for the evening shift (Tr. 507, 508; CP Exh. 1).

positions were eliminated and the other dietary aides refused to work for $10 dollars per hour. Warren said that the prior dietary staff supervisor, Cameron Walden (now deceased) was replaced by Samantha Ward (Ward). It was represented to Warren that Ward worked for Pinnacle. Warren insisted that he observed Ward working at Sprain Brook in a supervisory capacity prior to September 12. He said that Ward worked as the dietary assistant manager for three months prior to September 12 (Tr. 437-448).

Warren testified that he was rehired to the same position and ". . . everything was the same, but just different people I was working with . . . after being hired by Respondent Pinnacle (Tr. 446). However, Warren received lesser salary and his work schedule changed. He was now working for 5 days instead of 6 days. Warren also said that his schedule for his breaktime changed and he was no longer paid for his 30 minute breaktime (Tr. 453–455).

The relationship between Pinnacle and Budget in rehiring the Sprain Brook employees becomes increasingly confusing. In addition to a Pinnacle job application that was captioned with "Budget Services" on the application and the dietary aides receiving uniforms with the Pinnacle logo, Warren testified that his paycheck stub was captioned "Budget Services" and that he had completed a direct deposit application with Budget Services as his employer. When Warren was rehired, he also agreed and signed two Budget Services policy agreements on time and attendance (P. Exhs. 2, 3, and 4; Tr. 542–544).

Alvin Nicholson (Nicholson), a dietary aide at the Sprain Brook facility and an 1199 SEIU union delegate, was also present at the September 12th meeting. Nicholson testified that he and the other aides were informed by Mushell that Klein was no longer the owner of Sprain Brook and was given the two letters that Warren had received. Nicholson was informed that the Pinnacle team was in the dining area with job applications if the aides wanted to be rehired. Nicholson testified that Mushell informed the dietary aides that their new salary will be $10 dollars an hour. Nicholson said he was receiving $11.75 at the time. Nicholson understood that the new dietary director would be Samantha Ward. Like Warren, Nicholson also recall seeing Ward several times in the facility prior to the sale. Nicholson testified that Ward was from Pinnacle and that other supervisors also represented to him that they were from Pinnacle because they wore the Pinnacle logo on their purple shirts. Nicholson applied and was rehired. Nicholson also received a uniform with the Pinnacle logo.

Adding to the confusion and like Warren, Nicholson completed a job application with the Budget Services caption on the form (Tr. 670; P Exh. 5). Nicholson said that his job changed after working for a few weeks. Nicholson, a dietary aide, was asked to perform cooking functions by Ward on October 12, 2012. Nicholson initially refused to perform chef duties but agreed to do so after Ward offered him $14 per hour.[27] Nicholson repined that he never received the salary increase to $14 dollars and complained to Ward on or about October 18 that his pay check did not account for his raise increase (Tr. 594–605, 615–617, 647–651).

Carmen Smith (Smith) testified that she has been employed by Sprain Brook since the 1980s (did not recall her specific hiring date). She started as a nurse's aide and was reassigned to a dietary aide 11 or 12 years ago at $14.75 per hour. Smith also attended the September 12 meeting where she was informed of her discharge and given an offer of rehiring by Pinnacle. Smith testified that Ward told her that she was the new manager with Pinnacle. Smith said that she completed a job application with the Budget Services Inc. caption (GC Exh. 27). She said that her hours of work did not change but her salary was reduced to $10 dollars

[27] Nicholson testified that he worked 3 days as a cook and 2 days as a dietary aide during the week. Nicholson primarily worked the morning day shift but on occasions, he would do the cooking during the dinner shift (Tr. 635, 655).

per hour[28] (Tr. 355–365). Smith was unsure if she was rehired by Pinnacle or Budget because the Pinnacle representatives inferred that she was being hired by Pinnacle but her job application had the Budget Services, Inc. caption (Tr. 407–413).[29]

Nogueira testified that she was also present at the September 12 meeting regarding her discharge. Nogueira, who was now a housekeeper, attended the meeting with the housekeeping and maintenance staff. She said the meeting was attended by Mushell and Nachfolger along with two other individuals she identified as Jose and Patrick.[30] Nogueira received two letters similar to the ones received by the other department employees. One letter signed by Klein was addressed to the housekeeping and maintenance staff informing them that the facility has been sold to Stein as a managing partner of Sprain Brook Manor Rehab, LLC and that they have been discharged effective immediately. The second letter signed by Stein informed the housekeeping and maintenance staff that arrangements were made for their immediate rehiring without interruption by Confidence (Tr. 280–282; GC Exh. 22a and 23a).

Nogueira said that after Mushell and Nachfolger left the meeting, Patrick spoke to the housekeeping and maintenance staff. Nogueira recalled Patrick stating that he was from Confidence and that the staff would be taking a pay cut if rehired. Nogueira objected to her pay cut and questioned why an 1199 SEIU representative was not present at the meeting. Nogueira and the others were also informed they would no longer receive a uniform allowance benefit but that everything else remained the same. Nogueira completed her job application and was rehired[31] (Tr. 283–286; GC Exh. 24).

Nogueira believed that all of the housekeeping and maintenance staff was rehired by Confidence. Nogueira stated that her hourly wage was reduced from $16 to $12 dollars and she lost her uniform allowance. Nogueira said that she also lost her paid vacation and sick leave days. She stated that there were no health benefits unless she signed up with Union Local 312. She complained of more work once she was rehired. In addition to taking instructions from her Confidence supervisor, Brian John, Nogueira said that Jose would visit the facility once or twice per week (Tr. 289–298).

Katrina Gjelaj (Gjelaj) has been employed as a housekeeper at the Sprain Brook facility since 2001. She testified that since 2012, she has been employed by Confidence, CBM and starting from October 17, 2014, by Respondent Budget Services. Gjelaj said that on September 17, 2014, she was informed by her supervisor that the housekeeping functions were now under Budget Services and she would have to attend a meeting with Mushell, the Sprain Brook administrator. At that meeting, Gjelaj completed a job application with Budget Services. She was given the job application by Estefany Sanchez. Gjelaj said her salary increased by .25 cents under Budget (Tr. 1524–1531).

Shelly Ann Williams (Williams) a CNA with Sprain Brook since 2004 testified that she received a discharge notice that was signed by Klein. Williams also received an offer of employment as a CNA with Respondent Budget Services. The offer stated that upon acceptance of the offer, Williams' employment would continue without interruption and at her current wage rate. This offer was signed by Stein. Unlike the other departments, no meeting

[28] Smith's payroll stub had the name of "Sprain Brook Nursing Home" on the top left hand corner and indicated her now reduced salary (GC Exh. 28).

[29] Adding to the confusion, Smith was subsequently provided with a time and attendance policy in March 2013 that was given to her by the Pinnacle supervisor "Anthony" (surname not recalled) and said it was from Respondent Budget (Tr. 380; GC Exh. 31).

[30] Jose is Jose Perez and Patrick is Patrick Egan from nonparty Confidence.

[31] The Confidence job application was captioned as "SC & BP Services, Inc."

was held with the nursing staff regarding their discharge and rehiring notices. The two notices were included in Williams' paycheck. Williams said she completed a job application at the direction of the nursing director, Amelia Mendizabal,[32] and returned it to her.[33] Williams testified that her work duties and hours did not change under the new ownership (Tr. 817–826; GC Exh. 22c and 23c).

Paula Robinson (Robinson) provided testimony similar to Williams. Robinson has been a CNA with Sprain Brook since February 2004. She was on vacation and upon her return, she was asked to complete "some paperwork" by Mendizabal. Robinson said she was given two letters by her supervisor, Paul Qunto. The two letters were her discharge and an offer of employment as a CNA with Budget Services. Robinson completed her job application with Budget Services on September 21. Robinson testified that her hours and work duties did not change (Tr. 864–869).

Estefany Sanchez (Sanchez) testified that she is employed by Respondent Sprain Brook as a HR assistant and staffing coordinator.[34] She testified that as the HR assistant, she was responsible for ensuring that the job applications and resumes of the nursing candidates were properly completed. She also scheduled job interviews with the candidate and the nursing director, Mendizabal. Sanchez said that after the candidates were interviewed, she would forward the application to Respondent Budget because Budget was the employer of the nursing staff (Tr. 1386–1388).

Sanchez communicates with Shaina Fekete from Budget Services on occasions regarding payroll issues with the nursing staff. Sanchez said that she was responsible for ensuring that the hours worked by the nursing staff matches up with the clock-in and clock-out time. She provided an example that if an employee was working from the 11 to 7 shift, she would know the actual hours worked based upon the time the employee punched in and out on the time clock. She stated that the time and attendance information is then sent to Fekete for issuing the checks to the nursing staff. Sanchez testified that Nachfolger provides her with the time and attendance and payroll instructions. On occasions, she is involved with Fekete regarding bounced checks received by a nurse employee or with an issue regarding an employee not receiving a wage rate increase (Tr. 1390–1397; GC Exh. 86 and 87). Sanchez also played a role as the staffing coordinator. Aside from coordinating job interviews, she is also responsible for creating the work schedules for newly hired CNAs in consultation with Mendizabal (Tr. 1388–1390).

Jose Perez (Perez), as the former regional manager for Confidence from 2010 to 2014, provided some insight to the hiring of the former employees. He was present at the September 12 meeting along with Patrick Egan, who was the Confidence vice president for the New York area at the time. Perez also noted that Brian John was the director of housekeeping. Perez said that he was directly involved in hiring the housekeeping and maintenance staff after they were discharged. Perez said he was not involved in the contract negotiations for Confidence services but was involved in offering jobs for the discharged employees with Confidence. Perez said there were no interviews conducted and those employees interested in being rehired completed a job application. Perez testified that Nogueira was one of the housekeepers that were hired by Confidence. Perez said that Nogueira was supervised by Brian John and her paycheck was issued by Confidence (Tr. 777–785; 811).

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[32] Mendizabal is a management employee with Respondent Sprain Brook.

[33] A copy of Williams' job application was not available but she testified that the application she completed was similar to the one completed by Vernon Warren with the Budget Services caption on the employment application (Tr. 822–824; GC Exh. 38).

[34] In the transcript, some witnesses referred to Estefany as "Stephanie."

f. The Rationale for the Discharge

The intent of the owners of Respondent Sprain Brook was not to retain or hire any employees. Stein testified that the Sprain Brook employees were all discharged on September 12 and the effective rehiring date of Sprain Brook employees with the new companies would start on the following day (Tr. 163). Stein explained his business model as the new owner of Respondent Sprain Brook. He testified that he would retain the management and administration staff but not to hire any employees. He testified that he did not want to manage employees and all the non-management employees would be outsourced. Stein testified

> We do not manage employees. We don't have employees. They don't have employees. They don't have nothing of that—nothing of that category.

Nevertheless, Respondent Sprain Brook would retain supervisory control regarding the contracted employees. Stein explained that if Respondent Sprain Brook determines that a contracted company employee is not working in a satisfactory manner, the supervisor would contact the company and get another employee. For example, Stein stated that if the director of nursing (a Respondent Sprain Brook manager) is not satisfied with the work performance of a CNA or LPN, the director would contact the outsourced company for a replacement employee (Tr. 99–108).

Israel Nachfolger (Nachfolger) testified that he worked with Sprain Brook in a limited capacity in the payroll department under Klein when he was hired in March 2009. Nachfolger said that predecessor Sprain Brook was losing money and Klein somehow made contacts with Stein for the sale of the facility. Nachfolger said that Stein came to the facility "awhile later" after Nachfolger was hired to look around as a potential buyer. Nachfolger said it was a misconception that Stein was managing the facility before the sale. According to Nachfolger, Stein said he was not there in a management capacity but wanted to familiarize himself with the operations of the facility. Nachfolger testified that Stein repeatedly told him that he only wanted to take care of patients and wanted other companies to manage the kitchen, cleaning, and housekeeping departments. Nachfolger was told by Stein that he intended to outsource everything and other companies would be responsible for supervising the employees. Nachfolger was subsequently made CFO/controller by Stein in September 2012 after the sale to Respondent Sprain Brook (Tr. 937–940).

In response to the General Counsel's subpoena, Nachfolger stated that Respondent Sprain Brook is not in the possession of any job applications or employee policies and procedures because they all originated from the outsourced companies. Nachfolger said that he was not aware if any financial analysis was conducted on the viability of the outsourcing before the contracts were signed but that Stein would know (Tr. 964–967).

g. *The Request to Bargain*

Speller recalled 16 bargaining sessions between July 2008 and June 2011 between 1199 SEIU and Sprain Brook and meeting Stein at the July 14, 2009 bargaining session. The record shows that a first collective-bargaining agreement was never achieved between 1199 SEIU and predecessor Sprain Brook nor with Respondent Sprain Brook. Speller testified the first time that 1199 SEIU became aware that Respondent Sprain Brook was going to contract out some of the facility's unit work was in letter dated December 7, 2010, from attorney Jeffrey Meyer, who represented Sprain Brook, regarding the Sprain Brook laundry department (GC Exh. 44). In a subsequent telephone conversation, Speller testified that Meyer informed him that Sprain Brook intended to subcontract the laundry department work and to increase the cost to the employees for their health benefits. Speller objected to both changes in his letter to

Meyer dated December 10 and requested a bargaining session for late December to negotiate the changes and information on the alleged increase in the cost of health benefits and the maintenance and repair costs associated with the laundry department (GC Exh. 44b). Speller testified that the parties never met to bargain over the changes expressed by Meyer in his December 7 letter due to conflicts in scheduling a session (Tr. 701, 702).

Attorney Meyer informed Speller by letter dated March 14, 2011, that effective March 31, Respondent Sprain Brook will permanently close the laundry department. Attorney Meyer also asserted in his letter that the unilateral changes were being made because the Union never offered any proposal or sought to engage in any discussions over the changes (GC Exh. 44c). By letter dated March 16, 2011, Speller responded that the Union opposes any unilateral changes to the laundry department. Speller also reiterated that the Union is waiting for its information request of December 10 (GC Exh. 44d). As noted above, Speller testified that the closing of the laundry department was resolved with the reassignment of the remaining employee, Nogueira, to the housekeeping department (Tr. 703, 704).

Speller stated that the last bargaining session occurred on June 2, 2011, with himself, the 1199 SEIU attorney, Stein, Moses Strulovitch and attorney Meyer. Speller testified that he again inquired about the status of the sale of the facility and a closing date for the sale but received no answers (Tr. 706).

Speller testified that he was never informed when the sale occurred. He stated that the employees working at the Sprain Brook facility informed him in September 2012 that the sale had closed. Speller stated that he wrote a letter to attorney Meyer on September 13 regarding the sale of the facility and the subsequent subcontracting of the dietary, nursing, housekeeping and maintenance departments by Respondent Sprain Brook. In the letter, Speller request to negotiate over the changes (GC Exh. 45). Speller testified he never received a response from Meyer so he sent a letter to Stein on October 8, 2012, protesting the unilateral changes in subcontracting the departments and request to negotiate the changes and their effects. He also request information on the subcontracting, financial and other relevant information in preparation for bargaining. Speller never received a response from Stein to his letter (GC Exh. 46; Tr. 720–724).

Speller also sent letters to bargain and request information from Respondents Budget, Pinnacle and Confidence. The letter to Respondent Pinnacle referenced the contracting of the dietary unit and informed Pinnacle of the Union's opposition to the changes. The letter to Confidence referenced the housekeeping and maintenance unit and also stated the Union's opposition to the changes. The letter to Budget referenced the nursing staff and the Union's opposition to the changes made by Respondent Sprain Brook. The three letters were identical in substance except for the names of the Respondents. The letters stated that changes to the employees' terms and conditions of employment were implemented without notification and consent of the Union. The Union request that the changes be rescinded and to negotiate a first collective-bargaining agreement with each subcontractors. The letters also request certain information in preparation of bargaining and to include, among other items, any documents reflecting discussions or negotiations between each Respondent company and predecessor Sprain Brook and with Respondent Sprain Brook, as well as information on the wage rates, terms and conditions of employment, and other benefits of each employee and the names, home addresses, home telephone numbers, seniority dates, and hourly wage rates of each bargaining unit employee. Speller testified he received no response from any of the Respondents except for Confidence[35] (Tr. 724–728; GC Exhs. 47, 48, and 49).

[35] Speller received an email from Brian Powers of Confidence on October 8, 2012, stating he had no knowledge of the items described in Speller's letter (GC Exh. 50). Speller further

Continued

1. The Denial of 1199 SEIU Access to the Facility

In addition to protesting the subcontracting and to request bargaining with Respondents Budget, Pinnacle, and Confidence, Speller also kept the unit employees informed as to the status of the bargaining. Obviously frustrated with the progress of negotiations, Speller testified that he prepared a flyer in spring 2012 demanding that the "new bosses" (Stein and Strulovitch) ". . . to come to the table and settle a contract that guarantees us good raises and a better living standard" (GC Exh. 39).

Speller instructed Adrien Trumpler, an 1199 SEIU organizer, to distribute the flyer to the employees at the Sprain Brook facility. Trumpler reported to Speller that he was approached by Stein in the employee's cafeteria and was yelled at and ordered by Stein to leave the facility when he attempted to distribute the flyer. Speller said that the Union always had access to the Sprain Brook facility since the start of negotiations in 2008 and was never informed by Sprain Brook management of any change in access policy. Speller repined that Trumpler had unfettered freedom to consult with workers and would even meet with Stein and Strulovitch on occasions before this change in access policy (Tr. 712–714).

Adrien Trumpler (Trumpler) testified that he is a contract administrator employed by 1199 SEIU and is responsible for overseeing the working conditions of employees in 13 nursing home facilities. Trumpler has held this position since 2006. It was Trumpler' s practice to visit the Sprain Brook facility once or twice per month. Trumpler said he would usually meet employees in the dining area and had occasions to meet with Stein and Strulovitch regarding the discipline of employees. Trumpler said he never made an appointment with the facility management before accessing the facility. Trumpler said this practice changed in May/June when he arrived at the Sprain Brook facility to hand out the flyers (GC Exh. 39). Trumpler had finished meeting and speaking with employees in the dining area and was preparing to leave the facility when Stein walked in. Stein told Trumpler that he was not allowed in the facility and demanded that he leave the premises. Stein also told Trumpler that he needed to make an appointment with management in the future before he could access the facility. Trumpler said that Stein gave him no reasons for the change and no further conversations occurred on that day with Stein (Tr. 548–556). Trumpler testified that he was at the facility in August 2012 to arrange for a meeting with Sprain Brook management over the Union's access to the facility but was not able to arrange for a meeting (Tr. 552, 563).

2. Parking Lot Incident

Trumpler testified to a second encounter with Stein after the Sprain Brook employees were informed of their discharge on September 12, 2012. Trumpler returned to the Sprain Brook facility with different flyer on October 17 after the unit employees were rehired by the contractors. Trumpler remained in the employee parking area to distribute his flyer since he did not have permission to enter the facility. Trumpler said that he was with Nicholson in the afternoon around 3 p.m. on October 17 (Tr. 556–558). The second flyer was double-sided. One side stated that Sprain Brook management was taking away the employees' benefits through subcontracting the work and bringing other unions in order to reduce their benefits. The flip side of the flyer encouraged the employees to attend an 1199 SEIU meeting (GC Exh. 40).[36]

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testified that a similar letter as described above was sent to CBM on July 18, 2013, after Respondent Sprain Brook subcontracted the housekeeping and maintenance departments to CBM (Tr. 727, 729; GC Exh. 51).

[36] Trumpler believed that both flyers were drafted by Speller. Trumpler testified that he had no input in the flyers and was not intimate with the contents of the flyers (Tr. 567–573).

Trumpler testified that Stein came out of the facility yelling and screaming at him because he was on Sprain Brook property. According to Trumpler, Stein had called the police and a police car arrived at around the same time that Stein approached Trumpler. Trumpler explained to the police that the employees had voted in 1199 SEIU and Stein is refusing him access to the facility. The police officer spoke separately with Stein and returned to inform Trumpler that he had to leave since the Union did not have a contract with Respondent Sprain Brook. Trumpler got into his vehicle and departed from the parking lot, but before he left, the police waved Trumpler back because Stein had something to say to him. According to Trumpler, Stein said that "You know, if you come over here even at night we're going to arrest you. Don't come back here ever." Trumpler has not returned to the facility since the October 12 incident (Tr. 558–561).

Nicholson testified that he was finishing his work shift around 3 p.m. on October 17 when he received a phone call from Nogueira that Trumpler was outside the facility in the parking lot and ask that Nicholson assist Trumpler. Nicholson agreed and met with Trumpler in the parking area. Nicholson assisted in distributing the flyers and observed Stein approach Trumpler. According to Nicholson, Stein demanded that Trumpler leave the area and threatened to have him arrested if he did not leave. Nicholson said he was able to distribute about 20 flyers until the police arrived and was prevented from handling out any more flyers after that time (Tr. 607–615, 656–657).

h. The Respondent Local 713 International Brotherhood of Trade Unions

Local 713, International Brotherhood of Trade Unions (Local 713 IBOTU) is a party to the contract in the General Counsel's complaint against the named Respondents. Local 713 is also a Respondent in the complaint based upon charges filed by 1199 SEIU.[37]

The record shows that on January 15, 2008, Budget Services entered into a collective-bargaining agreement with Local 619 IUJAT signed by the president of Local 619 and Weber on behalf of Budget. The CBA between Local 619 and Budget covered a unit of "aides who are dispatched from Renaissance" (GC Exh. 52).[38] Weber testified that he negotiated the contract but could not remember the details. Weber recalled that the CBA would only cover a specific group of Budget employees working at the Renaissance nursing facility (Tr. 1320–1323).

During the April 2009 time frame, Local 619 merged with Local 713 and Local 713 became a successor to Local 619. In an undated assumption of agreement and merger, the two unions agreed that Local 713 will adopt the current collective-bargaining agreement of Local 619 and to assume all the rights, duties, and obligations of the agreement. Weber, as president of Budget Services Inc., signed and agreed to recognize Local 713 as the collective-bargaining representative of the unit employees "employed by Budget Services, Inc." (GC Exh. 53).

On September 10, 2012, Weber on behalf of Budget Services and the president of Local 713 entered into a memorandum of agreement to continue the collective-bargaining agreement on "day to day basis" after the expiration date of the CBA on January 4, 2011. The agreement was for a period from January 15, 2012, to January 14, 2015. The memorandum of agreement expanded the Budget employees from "aides who are dispatched from Renaissance" to now include full time and regular part time LPNs, CNAs, activity aides, home health aides, personal care aides, and dietary employees and other related jobs regularly scheduled to work twenty or more hours per week at this location and any other location in the New York Metropolitan area"

[37] Cases 02–CB–095670 and 02–CB–146895.

[38] Renaissance was and is a nursing facility and a client of Budget Services at that time.

(GC Exh. 54). The other locations were not identified in the agreement (except for Renaissance that was noted in the CBA).

Weber testified that it was his signature on the memorandum of agreement but did not recall the discussions surrounding the agreement. Weber could not recall seeing any signed authorization cards or whether there was an election to include the other categories of Budget employees. Weber could not explain how the memorandum of agreement now included LPNs, CNAs, activity aides, home health aides, personal care aides and dietary employees (Tr.1329–1335).

On November 1, 2012, Budget Services and Local 713 entered into a recognition agreement for unit employees working for Respondent Sprain Brook in the dietary unit. The recognition agreement stated that the union had demanded that the employer recognize it as the collective-bargaining representative of the dietary unit; that at the request of the employer, the union has produced authorization cards; that the employer had compared the signatures on the authorization cards' the employer has verified that the authorization cards are genuine signatures from a majority of the employees employed in the dietary unit. The recognition agreement further stated that Budget Services recognizes and acknowledges the union as the sole and exclusive collective-bargaining representatives for all its full time and regular dietary employees, excluding temporary and seasonal employees, clerical, managerial, and professional employees, guards, and supervisors. The parties agreed to execute a collective-bargaining agreement "as soon as thereafter practicable" (GC Exh. 55).[39]

Weber has no recollections of signing the recognition agreement and did not recall the circumstances in signing the agreement. Weber stated that he did not recall Local 713 making a demand to represent the dietary employees and failed to remember requesting or seeing any authorization cards. Weber could not recall if a subsequent CBA was signed (Tr. 1338–1341).

I. The Discharge of Key 1199 SEIU Supporters

1. Vernon Warren

Vernon Warren testified that soon after he started working as a dietary aide for Pinnacle, his new supervisor, Andrew (he failed to recall the last name) had a meeting with the six dietary aides in a work area. Warren believed that Andrew was a manager from Pinnacle and he worked as Ward's assistant. Warren believed that Andrew only worked at the facility for 2 weeks in late September and early October. Warren said that in early October 2012, Andrew held a meeting with the 6 dietary aides and said he had two cards for the dietary aides to complete and sign. Warren said that one card (blue) was for health insurance benefits with Local 713 (GC Exh. 26b) and the second card (yellow) was a check off authorization card (GC Exh. 26a). Warren and the other dietary aides were instructed to complete the two cards within 24 hours. Warren did not sign the two cards (Tr. 461–466).

Warren testified that shortly afterwards, an individual by the name of Foruq Rahim believed to be a representative from Respondent Budget approached him at work and request that Warren sign the same two cards. Warren again refused to sign up with Local 713. On October 25, Warren met with Ward when he arrived at work. Ward informed him that he was fired from his dietary aide position. Warren recalled Ward saying to him "It sucks but I have to fire you." On the employee disciplinary action form, it was stated that Warren was fired due to unsatisfactory work performance. Warren said that he has never been previously disciplined for

[39] Pinnacle was not a party to the recognition agreement and had never entered into a collective-bargaining agreement with Local 713 or any union.

his work performance and Ward never explained the unsatisfactory work that resulted in his discharge. The record is void of any documents of prior discipline or unsatisfactory work performance issued to Warren. Warren believes that his discharge was due to his refusal to sign up with Respondent Local 713 (Tr. 468–474; GC Exh. 30).

Warren subsequently received a letter from Respondent Budget dated May 22, 2013, with an offer of full-time employment at the Sprain Brook Manor facility in the position he formerly held at the same hourly rate with retention of his prior seniority. The letter was signed by Jacob Rosenberg from "Budget Agency" and Warren was asked to call Gerald Gervasio, a Managing Director at Budget (GC Exh. 36). Warren testified that he called Gervasio and was informed to call a Raul Lopez, who was now the new manager in the Dietary Department at the Sprain Brook facility. Warren met with Gervasio and another dietary aide supervisor, Anthony Wright, on Wednesday (May 29, 2013) and was asked to complete two job applications. Warren completed both applications and went back to work at the same $10 dollars-per-hour wage rate. The record reflects that one job application was captioned "Pinnacle Employment Application" and the second application completed by Warren was captioned "Employment Application, Budget Services, Inc." The Budget job application also contained a criminal background check (GC Exhs. 37 and 38; Tr. 476–486).

Warren testified that he returned to work at the Sprain Brook facility in late May or early June 2013 and he reported directly to Anthony Wright. Warren said that his health insurance benefits were not restored when rehired. Warren inquired as to his benefits and was informed by Steven Lopez, the dietary manager, to contact a "Crystel" at Pinnacle.[40] Warren called Crystel in November 2013 and was informed that Warren needed to sign a union membership card with Local 713 to receive health benefits. Warren replied that he already belongs to another union and refused to sign with Local 713. Warren was again approached by supervisor Lopez in December to sign a Local 713 union card and one for his health benefits (GC Exhs. 26a and 26b). Warren was informed that he needed to sign with Local 713 before he could receive health benefits. Warren again refused. Warren said there was a third occasion in January/February 2014 when he was approached by a Local 713 representative and was told that he needed to sign the union card before he could receive any health benefits. Warren refused to sign up with Local 713 (Tr. 486–495).

2. Alvin Nicholson

Alvin Nicholson testified that his food service job required that he attend a physical examination on routine basis. Nicholson said that under the predecessor Sprain Brook, his physical examination was provided free of charge by the facility. On October 22, Nicholson was directed to take a medical examination. Nicholson testified he went to see the facility receptionist, whom he identified as "Stephanie."[41] Nicholson was asked by Sanchez to complete some forms and then to visit the nurse at the facility. According to Nicholson, Sanchez provided him with two cards to complete. Like Warren, the yellow card was for Local 713 authorization for union dues and the blue card was for health benefits (GC Exhs. 26a and 26b).

[40] Vernon could not recall the surname of Crystel. As already noted; this person was identified as Crystel Ploschke and employed with AAA Supplies as the HR resource assistant. Pinnacle is a subsidiary of Triple A Supplies, Inc. (Tr. 1585–1589).

[41] Nicholson did not recall Stephanie's surname. Although the transcript recorded the name as "Stephanie," it is not disputed by the parties that Stephanie is actually Estefany Sanchez, and as noted above is employed by Respondent Sprain Brook as the HR assistant and staffing coordinator.

Nicholson refused to sign the two cards and told Sanchez that his physical examination had always been free in the past. Nicholson was confused as to when Sanchez called his supervisor over the dispute about the free physical. Nicholson thought there were one, but perhaps two conversations between Sanchez and his supervisor about his refusal to pay for his examination. Nicholson recalled speaking to Sanchez at her work area regarding the signing of the two cards before Nicholson could receive a free examination. Nicholson also said that he spoke to his supervisor in the lobby as he was leaving the receptionist area. At this time, Sanchez also appeared in the lobby. Nicholson reiterated to his supervisor that his physical examination should be at no cost to him. Nicholson said that he left the two individuals and headed to the kitchen.

Nicholson said that later on October 22; he received a telephone call from Ward and to see her at the end of his shift. At the meeting with Ward, Nicholson was informed that his cook position was being eliminated. Nicholson asked to return to his full time dietary aide position but was informed by Ward that someone else was being trained for that position. Nicholson was discharged by Ward on the same day (Tr. 617–628, 651–65?, 661–663; GC Exh. 41).

3. Clarisse Nogueira

Clarisse Nogueira also experienced a similar encounter with Confidence's attempt to have her join another union. She testified that on September 25, her supervisor directed her and the rest of the housekeeping and maintenance staff to meet with Jose.[42] Perez introduced the staff to Ken Franz, a business agent, from Local 312. Nogueira informed Franz that she already belonged to 1199 SEIU. According to Nogueira, Franz left the Local 312 authorization form to sign and his business agent card. Nogueira did not complete the union card (Tr. 286–289; GC Exhs. 25a and 25b).[43]

As a union delegate with Local 1199, Nogueira was disturbed that employees were being intimidated to sign with Local 713 and 312 in order to obtain benefits. Nogueira was aware that Nicholson was discharged after he assisted Trumpler with the distribution of flyers on October 12 and in his refusal to sign the Local 713 union cards on October 22. Nogueira was also an advocate for another employee in refusal to sign a Local 713 union card. Nogueira identified the other person as "Galina," employed as a CNA. Nogueira recalled telling Galina she did not have to complete the Local 713 union card and that 1199 SEIU was the rightful union. Nogueira said this conversation occurred on October 23 in an elevator in the presence of Sanchez who held a stack of Local 713 union cards.

Nogueira had a conversation with Perez the next day regarding her conversation with Galina's refusal to sign the union card. Nogueira told Perez that she was a delegate with 1199 SEIU and had the right to tell Galina about her union rights. According to Nogueira, when she arrived at work on the following day, she was instructed by her supervisor to meet with Perez. Perez told Nogueira that Stein and Strulovitch believe she was harassing the staff and not fulfilling her duties. Nogueira replied that management was harassing the staff. Nogueira testified that Perez informed her that Stein and Strulovitch wanted her fired. No apparent reason was provided for her discharge and no documentation of her termination was completed by Respondents Sprain Brook or Confidence (Tr. 304–314; 336–340).

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[42] Nogueria failed to recall Jose's surname but believe he was from Confidence. As noted Jose's surname is Perez and he was the regional manager for Confidence at the time.

[43] Nogueria also became aware of Local 713's drive to recruit employees in October 2012. Nogueria said that she was not approached by any Local 713 representative to sign up but was given copies of Local 713 health and welfare fund enrollment card and a Local 713 application and check-off authorization form (Tr. 298–303; GC Exh. 26).

Perez testified that Stein spoke to him about Nogueira. According to Perez, Stein said that Nogueira was harassing the staff and she was not meeting the standard of the housekeeping department. Perez said that Stein told him, "Jose, you have to terminate her. You have to fire her." Perez responded that he needed to investigate these allegations and get back to Stein. Perez made his weekly visits and spoke to other employees and no one had any issues with Nogueira. Perez also spoke to Supervisor Brian John and was informed that Nogueira was not interfering with any other employees. Perez verified that Nogueira may of talked too much but she was making her standards. Perez said he was instructed to discharge Nogueira by Stein. Perez said he contacted his supervisor, Patrick Egan, and was told that there were disciplinary protocols that Confidence follows in discharging an employee. However, a few days later, Perez was given the green light to discharge Nogueira. Perez did not know why Egan had changed his mind. Perez told Nogueira she was harassing the staff and her duties were not being fulfilled. Perez admitted that this was not true based upon his own investigation of the situation but was nevertheless directed to discharge Nogueira. Perez did not recall the exact date when Nogueira was discharged but believe it was in October 2012 (Tr. 785–793, 809, 814).

4. Corroborating Witnesses

Carmen Smith (Smith), a dietary aide, testified to Ward's attempt to have her join Local 713. Smith said she met with Ward on October 24 and was told by Ward she was about to be discharged. No reason was given by Ward for Smith's discharge. However, Smith testified that that she then spoke to a "Kevin" (surname unknown) from Local 713 and was asked to sign a Local 713 check off (yellow) authorization card and a health insurance (blue) card (GC Exh. 29). Smith said she was coerced to sign the two cards because she needed her job and health insurance (for her illness) and would no longer have health benefits unless she signed with Local 713 (Tr. 365–370). The record shows that Smith joined Local 713 and had her union dues deducted from the paycheck by Respondent Budget (Tr. 374; GC Exh. 31).

Shelly Williams (Williams), a CNA, testified that she was also coerced to sign a Local 713 membership card. Williams was called to the recreational center along with other employees a few days after she had completed her job application. Williams stated that there was a Budget representative and a person from Local 713, who she identified as Kevin Watts. Williams completed the Local 713 union cards (previously identified as GC Exh. 26 a-c). Williams complained that her benefits were reduced under the new union (Tr. 829–836).

Paula Robinson (Robinson), a CNA, similarly testified that she was given two sets of documents sealed in envelopes. Robinson admitted that she did not open her envelopes but believed that the two packets were forms to sign up with Local 713 and for her health benefits. Robinson did not sign up with Local 713 but Local 713 union dues were nevertheless deducted from her paycheck. She complained to Watts in January 2013. Watts promised to meet with Robinson at his next scheduled visit to the facility, but never met with her (Tr. 873–885).

Katrina Gjelaj (Gjelaj) testified that when she was instructed by Sanchez to complete her job application for a housekeeping position with Respondent Budget Services, she was also given a "union card" authorization form for Local 713 by Sanchez to complete. Gjelaj testified that the Sprain Brook administrator, Mushell, instructed the housekeeper to complete Local 713 union authorization cards. Gjelaj said that she needed her health insurance and was told she would receive health benefits with Local 713. She refused to sign with Local 713. Gjelaj testified that she is now receiving her health insurance from another entity and not with Local 713. Gjelaj insisted that union dues were nevertheless taken out of her paycheck even though she never signed up with Local 713. The record reflects that union dues to Local 713 were deducted from Gjelaj's paycheck for the pay period ending on October 24, 2014 (Tr. 1533,

1555–1560; GC Exh. 105).

IV. Successorship

The General Counsel argues that Respondent Sprain Brook became a successor to predecessor Sprain Brook at the latest on June 15, 2012. It is argued that Respondent Sprain Brook violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with 1199 SEIU as the exclusive collective-bargaining representative of its employees and in making unilateral changes to employees' terms and conditions of employment without providing notice to 1199 SEIU and an opportunity to bargain over the changes and without first bargaining to overall impasse. The unilateral changes include the discharge of all 1199 SEIU bargaining unit employees and contracting their work to Respondents Pinnacle, Budget, and CBM.

As such, I must first determine whether Respondent Sprain Brook is a successor to predecessor Sprain Brook. This is so because Respondent Sprain Brook claims that there was no substantial continuity between the two entities with an obligation to bargain.

Discussion and Analysis

An employer, which buys or otherwise takes control of the unionized business of another employer, succeeds to the collective-bargaining obligation of the seller if it is a successor employer. For it to be a successor employer, the similarities between the two operations must manifest a "substantial continuity between the enterprises" and a majority of its employees in an appropriate bargaining unit must be former bargaining unit employees of the predecessor. The bargaining obligation of a successor employer begins when it has hired a "substantial and representative complement" of its workforce. *NLRB v. Burns Security Services,* 406 U.S. 272 40 (1972); *Fall River Dyeing Corp. v. NLRB,* 482 U.S. 27; 107 S. Ct. 2225 (1987), affd. 775 F. 2d.

The General Counsel asserts that Respondent Sprain Brook is a successor and is therefore obligated to recognize and continue to bargain with the representative of the employees over a first collective-bargaining agreement. The General Counsel argues that Respondent Sprain Brook's refusal and failure to recognize and bargain with 1199 SEIU violates Section 8(a)(5) and, derivatively, Section 8(a)(1) of the Act.[44]

Specifically, the General contends that Respondent Sprain Brook is a successor employer to SBMNH, LLC with an obligation under the Act to recognize and bargain with the Union as the collective-bargaining representative of the bargaining units of workers in housekeeping and maintenance, nursing staff, and dietary/cooks at the facility. Respondent Sprain Brook rejects these claims, contending that it is not a successor employer because SBMNH, LLC terminated all of its nonmanagement employees and Respondent Sprain Brook did not have a majority of employees from the predecessor's employees when it took control of the facility on September 13, 2012.

In *Burns International Security Services,* above*,* it is well settled that a successor employer must bargain with the employee representative when it becomes clear that the successor has hired its full complement of employees and that the union represents a majority of those employees. The Board has held that when a business changes hands, the successor employer must take over and honor the collective-bargaining agreement negotiated by the

[44] An employer's violation of Sec. 8(a)(5) of the Act is also a derivative violation of Sec. 8(a)(1) of the Act. *Tennessee Coach Co.*, 115 NLRB 677, 679 (1956), enfd. 237 F.2d 907 (6th Cir. 1956). See *ABF Freight System*, 325 NLRB 546 fn. 3 (1998).

predecessor or to recognize and continue to bargain with a union as the exclusive collective-bargaining representative of the predecessor's employees.

Under *Burns* and its progeny, an employer that acquires a predecessor's operations succeeds to the predecessor's collective-bargaining obligations and is required to recognize and bargain with a union representing the predecessor's employees when (1) there is a substantial continuity of operations after the takeover; (2) a majority of the successor's employees at the facility it acquired from the predecessor were former predecessor employees; and (3) a majority of the new employer's workforce in an unit remains appropriate for collective bargaining under the successor's operations. Also, *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 43 (1987).

The rule of successorship imposes an obligation on a new employer to bargain with the union of its predecessor. *Fall River Dyeing*, 482 U.S. at 36. "If the new employer makes a conscious decision to maintain generally the same business and to hire a majority of its employees from the predecessor, then the bargaining obligation of 8(a) (5) is activated." Id. at 41–42. In situations where, as here, the successor has neither a prolonged start-up period with gradual or staggered hiring of employees nor a significant hiatus in operations, but instead immediately retains a full complement of employees of the predecessor, the bargaining obligation attaches as of the date the successor employs a "substantial and representative complement." *Fall River,* above at 46–52.

A threshold question is at what date Respondent Sprain Brook became a successor to predecessor Sprain Brook. The General Counsel maintains that Respondent Sprain Brook principals have been managing the facility as early as 2009 and formally took over the business on June 15, 2012 (GC Br. at 11). It is argued that Respondent Sprain Brook's bargaining obligation attached at the latest on June 15, 2012. Conversely, Respondent Sprain Brook argues that it did not begin managing the facility until after the assumption of operation on September 13 and after the predecessor's nonmanagement employees were terminated on September 12. The Respondent Sprain Brook concedes that it received the required approvals from the Department of Health on August 6, 2012, which would have triggered the deadlines set forth in the sales agreement but the closing was delayed due to issues between Klein and the estate of Book (R. Sprain Brook's Br. at 6, 7). The Respondent maintains that the actual closing date occurred on September 13, 2012.

The Respondent Sprain Brook also argues that it is not a successor to predecessor Sprain Brook because there were substantial differences between their businesses. Respondent Sprain Brook maintains that predecessor Sprain Brook operated the facility as a "full blown employer" and managed all aspects of the business, including employing all of the required individuals prior to September 12. It is argued that as of September 13, Respondent Sprain Brook was only in the business of "patient care" and entrusted aspects of its business operations to contractors (R. Sprain Brook's Br. at 11, 12). Stein, as the new owner, envisioned a business model to care only for patients and left the management of employees and other aspects of running the facility to contractors. As described above, Stein insisted at the hearing that "We do not manage employees. We don't have employees. They don't have employees. They don't have nothing of that—nothing of that category."

a. The Respondent Sprain Brook is a Burns Successor

I agree with the General Counsel that Respondent Sprain Brook became a *Burns* successor (at the latest) as of June 15, 2012, and it unlawfully refused to recognize and bargain with 1199 SEIU as a *Burns* successor in violation of Section 8(a)(5) and (1) of the Act. In *NLRB v. Burns Intl. Security Services,* 406 U.S. 272, 294–295 (1972), the Court stated:

> Although a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor, there will be instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit and in which it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms.

Under *Burns*, determining whether a new company is a successor "is primarily factual in nature and is based upon the totality of the circumstances of a given situation." *Fall River Dyeing,* 482 U.S. at 43. Thus, a finding of successorship as of June 15, 2012, would impose an obligation on Respondent Sprain Brook to continue collective-bargaining with 1199 SEIU to lawful impasse because the new employer did not terminate its employees until September 12.

An employer in a business takeover need not have acquired title to the assets of the business before he may be treated in law as the successor for collective-bargaining purposes. *East Belden Corp.,* 239 NLRB 776, 791 (1978); *Sorrento Hotel,* 266 NLRB 350, 356–357 (1983), and authorities cited. Rather, where a prospective buyer steps into the management of a union-represented business pending a conclusion of the sale of assets and does not then substantially alter the composition or appropriateness of the bargaining unit, he will be treated as a successor fitting within the "perfectly clear" exception suggested in *Burns* as triggering a duty to recognize and bargain with the incumbent union before making any subsequent changes affecting employment in the bargaining unit.[45] *Sorrento Hotel,* supra at fn. 23.

The operative language as to when a buyer's successor obligation attached is when it commenced with the management and control of the business operations. *East Belden*, above.[46] The difficulty, here, in assessing the date of successorship is due to the lengthy transition period between the signing of the sales agreement in 2009 and the claimed assertion by Stein that successorship occurred on September 13 when he announced his intent to set up new conditions prior to offering employment to former employees through the contractors. Nevertheless, based upon the record, I find that the successorship occurred at the latest on June 15, 2012.

In *East Belden,* above, the prospective buyer executed a written purchase agreement to buy a restaurant. Then, the buyer entered the property and took control of the restaurant during an approximate 2-month escrow period until the permanent transfer of the restaurant occurred. During escrow, the buyer retained a majority of the seller's unit employees who had been represented by the union in *East Belden.* Evidence of the buyer's control was reflected in the change in the restaurant's operating records to show that the buyer was the named operator during the escrow period. The buyer also paid various operating expenses of the restaurant, including the manager salaries and employee wages, during the escrow period. The buyer was the party to reap the profits or losses of the restaurant during the escrow period. Under these circumstances, the Board held that the buyer was deemed to have acquired the obligations of a successor employer during escrow.

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[45] Under *Spruce Up Corp*., 209 NLRB 194, 195 (1974), the Board held that a successor employer is free to set initial terms and conditions of employment when it is not "perfectly clear" that the employer "plan to retain all of the employees in the unit."

[46] The concept developed by this case permits successorship to attach before actual complete takeover by the purchaser if the purchaser enters the property during an escrow period and utilizes a majority of the seller's employees during this escrow period.

In *Sorrento Hotel,* supra, the new lessees executed a written interim management agreement to operate the hostelry while they awaited a long-term lease with the owner to begin. During this interim period, the lessees entered the property, took control of managing the property, obtained and utilized the necessary licensing and permits to manage the property, promised to indemnify the owner for any mismanagement, and utilized the owner's employees. The lessees incurred the business' operating expenses, including the compensation of the manager, who was designated by the lessees and who reported directly to the lessees.

The General Counsel maintains that Respondent Sprain Brook has been managing the nursing facility since the 2009 sales agreement. On August 18, 2009, Predecessor Sprain Brook entered into a purchase agreement with LNS Acquisition to sell the nursing home. The sellers of Predecessor Sprain Brook were Klein and the estate of Henry Book, each owning a 50 percent share of the facility. The buyer of the nursing home was LNS Acquisition. The sales agreement was contingent upon the approval of the sale by the New York State Department of Health (DOH) through a Certificate of Need application. The purchase price for Predecessor Sprain Brook was $7,800,000 dollars (GC Exh. 7).

Stein denied that he had a controlling interest in predecessor Sprain Brook. Stein testified that he was invited by Klein in 2009 to acclimate himself in the operations of the nursing home because he had no working experience in managing a nursing home and he wanted to learn about the business. Stein testified that he went in to “look around” and spoke to residents. He denied he was involved in the paperwork or finances of the facility’s operations until 2012.

I find that at the time of the sales agreement, Stein became a managing partner of the facility and had a financial interest as one of the new owners. Stein testified that Strulovitch and Schwimmer were the members (partners) of LNS. Stein denied that he was a member of LNS at the time of the sale and insisted he was not involved in the initial sales agreement. On this point, I find that Stein is not credible. The sales agreement identified the LNS members in the sales agreement as Sam Strulovitch, Lazer Strulovitch, Moses Friedman, *Allen Stein* and Leopold Schwimmer (GC Exh. 7 at 15).

I find that at the time of the sales agreement, LNS became the owner of the facility. As the new owner, LNS could have resold the facility at this point in time. The sales agreement gave LNS “unrestricted right to assign” the sales agreement. The sales agreement also allowed Respondent Sprain Brook to realize any profits accrued after the sale and suffer any losses in the business operations. As stated in the sales agreement, the seller had to account for its operations as of an “adjustment date” of January 1, 2007, which entitled Respondent Sprain Brook to “. . . any profit accrued with respect to the period from and after the Adjustment Date and shall bear any loss with respect to the period from and after the Adjustment Date” (GC Exh. 7 at 5).

On November 17, 2009, LNS assigned all rights, title, and interest in its purchase agreement to Respondent Sprain Brook Manor Rehab, LLC. The record shows that Stein was also an initial member of Respondent Sprain Brook when the sales agreement was assigned (GC Exhs. 10 and 11). The record shows that Respondent Sprain Brook had four partners: Lazer Strulovitch’s interest at 53.125 percent, *Stein at 25 percent*, Schwimmer at 12.5 percent and Friedman at 9.375 percent (GC Exh. 9 at 2). On November 25, 2009, Respondent Sprain Brook now doing business as Sprain Brook Manor Nursing Home (SBMNH), filed a Certificate Of Need (CON) application with the DOH seeking approval from the NYS Public Health Council to establish itself as a new operator of SBMNH (GC Exh. 9).

I find the testimony provided by Stein was not credible when he denied any managing control over the finances of the facility. As stated, Stein was an initial buyer as a member of LNS with a financial interest in the operations of the facility after the sale. Stein was also a

member of Respondent Sprain Brook when the rights to the sales agreement were assigned on November 17. The record further shows that Stein signed Schedules 1A and 13B in his Certificate of Need (CON) application on November 17, 2009, as a member of LNS (GC Exh. 9 and 12) and represented to the NYS DOH in his CON Application that he is and has been the comptroller of Sprain Brook Manor Nursing Home for the past 10 years (GC Exh. 6; Tr. 66).

Consistent with *East Belden,* above, Respondent Sprain Brook, executed a written purchase agreement to buy the healthcare facility in November 2009 and took control over the operations during an approximate 3-year period until the permanent transfer of the facility occurred in June 2012. During this period, Respondent Sprain Brook retained a majority of the seller's unit employees who had been represented by the 1199 SEIU. As in *East Belden,* evidence of the buyer's control was reflected in getting approval to retain the same legal name of the predecessor, finalizing the certificate of need application and representing to NYS DOH that Stein was in the capacity as the financial comptroller of Sprain Brook. The buyer was the party to reap the profits or losses of the facility during the transition period. Under these circumstances, I find that Respondent Sprain Brook is deemed to have acquired the obligations of a successor employer during the transition period.

Stein also admitted to some degree of authority and autonomy granted by Klein to "manage this; I should manage that; I should take care of stuff," but insisted that everything had to go through Klein. Stein also attended bargaining sessions with SEIU 1199 but maintains that he was there only at the direction of Klein and only represented Klein with certain aspects of the bargaining. Klein testified that he managed the day-to-day operations of the nursing home during his ownership and that he did not grant any authority to Stein to act on his behalf on labor/employment relations matters.

I credit Speller's testimony on this point. Speller testified that it was his understanding that the Union was negotiating with the buyers of the Sprain Brook facility. Speller never met Klein in any of the bargaining sessions and said that Strulovitch and Stein were intimately involved in the negotiations. Speller further testified that he never recalled Stein or Strulovitch telling him that any matters negotiated needed to be approved by Klein as part of any final agreement.

Speller said that Stein and Strulovitch told him that Sprain Brook wanted a union contract and a good working relationship with 1199 SEIU. Speller testified that he was introduced to Stein during a bargaining session on July 14, 2009, and was told by Strulovitch that Stein was one of the prospective buyers of the home. Speller said that he met Stein again on September 16, 2009, to discuss bargaining issues. Stein repeated that he wanted a good working relationship with the Union. Stein put Nachfolger by telephone contact with Speller the following day to continue discussions on a bargaining contract. According to Speller, he was informed by Nachfolger that he had experience in working with 1199 SEIU at other nursing facilities. The parties met at a bargaining session on September 22 and Speller met Stein and Nachfolger at this session. Subsequently Speller and Nachfolger exchanged emails on September 23 as a follow up on the bargaining.

I find that not only was Stein involved in the negotiations for a new collective-bargaining agreement with 1199 SEIU, but he was also involved with the day-to-day operations of the facility since 2009. Clarisse Nogueira testified that she observed Stein with Klein in 2009 walking around the nursing facility but she did not know who Stein was at the time. Nogueira corroborated Speller's testimony when she was introduced to Stein as someone who ". . .was taking over the facility . . . and he would be in negotiations for Sprain Brook" (Tr. 272–273). Nogueira also spoke to Stein at the nursing home when she questioned Stein's criticism of another housekeeper's job performance. According to Nogueira, Stein responded "You don't tell me what to do. I'm your boss" (Tr. 274–279).

Adrien Trumpler, as a delegate from 1199 SEIU, testified that he met Stein at the facility in May or June 2012 and was ordered to leave the premises. Stein told Trumpler that he was not allowed in the facility and demanded that he leave the premises. Stein also told Trumpler that he needed to make an appointment with management in the future before he could access the facility.

The Respondent Sprain Brook maintains that ownership transferred on September 13, 2012. Stein testified that it took 16 to 18 months for approval of the CON application due to the NYS DOH bureaucracy. The September 13 date of the transfer of ownership is disputed by the General Counsel.

A reasonable argument could be made, as maintained by the General Counsel, that successorship occurred on August 18, 2009, with the signing of the sales agreement for the property. Stein and (Lazer) Strulovitch were partners of LNS, the buyer of the property. Respondent Sprain Brook acquired the rights under the sales agreement from LNS on November 17, 2009. Stein and Strulovitch were also partners in Respondent Sprain Brook, LLC.

In the meanwhile, during the transition period between November 2009 and June 2012, Respondent Sprain Brook further demonstrated ownership by exercising management and control over the property. Respondent Sprain Brook incurred the losses and reaped the profits of the facility during this interim period. In addition, I find that Stein did more than "acclimate himself" to the business operations during this interim period. Stein actually held himself out publicly as a managing partner and the comptroller of the facility (for the past 10 years) in Respondent Sprain Brook's certificate of need application. Further, shortly thereafter, on June 27, 2012, Stein also signed a contract on behalf of Respondent Sprain Brook as "President" with Respondent Pinnacle regarding the contracting of the dietary aides and cooks (GC Exh. 16). For Respondent Sprain Brook to maintain that Stein exercised no or little management control until September 13 flies contrary to his authority to sign the June 27 contract and holding himself out to the public as the comptroller for Respondent Sprain Brook.

Respondent Sprain Brook had effected a significant management decision by contracting the dietary department on June 27 with an effective date of August 1. 1199 SEIU's objections that it was never provided a notice and an opportunity to bargain over this change fell on deaf ears. In the meanwhile, Stein held himself out as the new owner of the facility. Stein admitted to some degree of authority and autonomy conceded to him from Klein to "manage this; I should manage that; I should take care of stuff." Trumpler, the 1199 SEIU contract administrator, had occasions to meet with Stein and Strulovitch regarding the discipline of employees. Indeed, Stein directly changed the access policy with the Union and interfered with 1199 SEIU's ability to access the facility. No testimony or evidence was provided that the union access policy was implemented by Klein. The policy change was directly attributed to Stein as the new owner. In addition, Stein accepted and oversaw the direct supervision of some of the facility employees by criticizing the manner how an employee cleaned the windows and telling Nogueira that Stein was now "her boss."

In my opinion, I find that successorship occurred on June 15, 2012. Although Stein and others were already managing the facility since 2009 and conceivably an argument could be made that successorship occurred earlier, I find June 15 as the defining point as to when a bargaining obligation attached for Respondent Sprain Brook.

Under the terms of the sales agreement, the closing date would take place on ". . . a date not more than ninety (90) days following the receipt . . . of DOH's final non-contingent approval of the Application for Establishment… . . duly authorizing to operate the Facility" (GC Exh. 7 at 4). The application for Respondent Sprain Brook's operation of the nursing facility was

approved on April 6, 2012 (GC Exh.14), and the Medicare enrollment application filed on June 26, 2012, signed and attested by Stein that the change of ownership occurred on June 15 (GC Exh. 15).

I find that the Medicare enrollment application signed by Stein, as a managing member of Respondent Sprain Brook, represented to the public that Respondent Sprain Brook was the new owner of the healthcare facility. The Respondent argues that the Medicare document was not filed by Stein and that Stein did not read this document and therefore, it is inappropriate to bind Respondent Sprain Brook to the transfer of ownership on June 15 (R. Sprain Brook Br. at 20, 21). Contrary to the Respondent's assertions, the Medicare application is a significant document that Stein should have been aware of its importance and he should not be excused from attesting under civil penalty to the document simply because he did not have the foresight to discuss the application with his consultants.

Additionally, this is not the only document that establishes transfer of ownership. I find as equally significant was the signed electronic funds transfer agreement signed by Stein, attesting to the legal change of ownership as of June 15, 2012, and authorizing the transfer of funds between Respondent Spain Brook and his financial institute (GC Exh. 15).

Respondent Sprain Brook argues that it was not a successor because there was no substantial continuity between the two enterprises. Respondent Sprain Brook asserts that predecessor Sprain Brook operated the facility as a "full blown employer" whereas Respondent Sprain Brook only focused on patient care (R. Sprain Brook Br. at 11, 12).

I find as of June 15, 2012, there were both continuity in the workforce and continuity of the business enterprise when Respondent Sprain Brook purchased the nursing facility and an obligation attached for Respondent Sprain Brook to continue bargaining with 1199 SEIU. There was "substantial continuity" between the enterprises to the extent that the business of both employers is essentially the same and the employees of the new company were performing the same jobs in the same working conditions as of June 15. While this doctrine involves a multitude of factors, typically, the new employer must "hire a majority of its employees from the predecessor." *Howard Johnson Co. v. Detroit Local Joint Exec. Bd.*, 417 U.S. 249, 263 (1974).

Continuity of workforce is easily established here as Respondent Sprain Brook retained all of the predecessor's employees and the different employee units remained unchanged.[47] The critical inquiry in such an analysis is whether the new Respondent conducts essentially the same business as the predecessor, in other words, whether the similarities between the two operations manifest a substantial continuity between the enterprises. *Hydrolines Inc.*, 305 NLRB 416, 421 (1991), citing *Fall River Dyeing,* above 482 U.S. at 41–43 and *Burns Security Services*, above 406 U.S. at 280, fn. 4. The factors include whether the business is essentially the same, whether the employees of the new company are doing the same jobs under the same supervisors, and whether the new entity has the same production process, produces the same products and has the same body of customers. These factors are assessed primarily from the perspective of the employees, that is whether those employees, who have been retained will view their job situation was essentially unaltered. *Hydrolines*, above at 421.

The evidence establishes that Sprain Brook provided the same services and engaged in the same functions as its predecessor. The Respondent continued to provide short-term and long-term health care, and its employees continue to perform the same patient care duties with

[47] Payroll records of unit employees working at the Sprain Brook facility from June until September 2012 indicate that all continued to be employed by Respondent Sprain Brook (See, GC Br. at appendices 1–4).

the same equipment and materials. *O.G.S. Technologies, Inc.*, 356 NLRB No. 92 at p. 4; *Torrington Industries*, 307 NLRB at 810. There is no evidence that Respondent Sprain Brook had abandoned a line of business or otherwise made a change in its overall scope of its operations, made a substantial capital commitment, or implemented more sophisticated technologies which have changed the nature of its business. *O.G.S. Technologies, Inc.*, 356 NLRB No. 92 at p. 4.

Respondent's principal contention that contracting out "virtually all of the more remedial aspects of the operations (R. Sprain Brook Br. at 12) was a unique feature of the Respondent's business model different from predecessor Sprain Brook. However, the evidence and testimony at the hearing established that Respondent continues to operate the same facility, provides the same health care services in the same manner that it has for a number of years, to a substantially similar patient population in terms of overall acuity level. Respondent Sprain Brook applied for and was approved to continue operating under the predecessor's legal name. Respondent Sprain Brook represented to the NYS Department of Health that it was in the same business of nursing and health care of patients and residences. In situations such as this one, the evidence clearly establishes that Respondent Sprain Brook as of June 15, made no changes in the business operations and complement of the work force. The record shows, and I find, that Respondent Sprain Brook retained all of the nursing, dietary/cook, and housekeeping and maintenance employees and continued to operate as a nursing healthcare facility.

It is also hard to see how, from the employees' perspective (*Fall River*, above), that Respondent Sprain Brook can be anything but a successor. The unit employees under Respondent Sprain Brook as of June 15, 2012, were performing the same jobs, tasks and duties on the same property prior to and after the purchase of the facility. From the employees' perspective, there was no change in the scale of the operation or their job situations that would support the belief "that their views on union representation had changed." *Bronx Health Plan*, 326 NLRB 810, 812 fn. 8 (1998) (explain that this is the chief issue in determining "substantial continuity"), enfd. 203 F.3d 51 (D.C. Cir. 1999); also, *A.J. Myers and Sons, Inc.*, 362 NLRB No. 51 (2015).

Accordingly, I find that Respondent Sprain Brook is a *Burns* successor and successorship occurred on June 15, 2012. As with the buyer in *East Belden*, the Board marked successorship when the transitional period began, which meant that the lessees' successorship began with their interim management instead of when their long-term lease began. The salient facts in *East Belden* and *Sorrento Hotel* triggering successorship status before the purchase was final or the lease commenced are that there were written agreements to purchase or lease and an escrow or interim management period officially established for the prospective buyer or lessee to take control. The same salient facts are in existence with Respondent Sprain Brook.

b. The Respondents Budget and CBM are Burns Successors

The complaint alleges that Respondent Budget was a joint employer with Sprain Brook (see below). The complaint also alleges in the alternative that Budget was a successor regarding the nursing staff and that Respondent CBM was a successor to nonparty Confidence over the housekeeping staff with an obligation to bargain over any unilateral changes with 1199 SEIU. In turn, it is also alleged that Budget subsequently became a successor to CBM as of October 2014 regarding the housekeeping staff.[48]

[48] The General Counsel does not argue that Pinnacle was a *Burns* successor (GC Br. at fn. 22).

The Respondents Budget and CBM did not deny that they had refused to recognize and bargain with the Union but argue that no obligation existed because they are not legal successors.

I will first address whether Respondent Budget is a *Burns* successor. The General Counsel argues that even if Budget is not a joint employer with Sprain Brook, it was nevertheless a successor employer to CBM with regards to the housekeeping and maintenance staff with an obligation to bargain with 1199 SEIU over the initial terms of employment and any unilateral changes to the terms and conditions of employment.[49] The General Counsel also argues that Budget was a successor employer regarding the nursing staff with a bargaining obligation to the Union as of September 12, 2012 (GC Br. at 66). Respondent Budget stipulated that it did not provide notice to 1199 SEIU or an opportunity to bargain in regard to changes in the terms and conditions of employment in the housekeeping unit in October 2014 (Jt. Exh. 2)

As noted above, the test for determining successorship under *Burns* is well established: "A Respondent, generally, succeeds to the collective-bargaining obligation of a predecessor if a majority of its employees, consisting of a "substantial and representative complement," in an appropriate bargaining unit are former employees of the predecessor and if the similarities between the two operations manifest a "substantial continuity" between the enterprises. *Fall River Dyeing and Finishing Corp*., above at 41–43. The Board will normally assess whether a Respondent is a successor as of the time a union makes its demand for recognition and bargaining, provided the Respondent has already hired a substantial and representative complement of employees. See, *MSK Corp.*, 341 NLRB 43, 44–45 (2004).

The critical inquiry in such an analysis is whether the new Respondent conducts essentially the same business as the predecessor, in other words, whether the similarities between the two operations manifest a substantial continuity between the enterprises. *Hydrolines Inc.*, 305 NLRB 416, 421 (1991), citing *Fall River Dyeing,* above 482 U.S. at 41–43 and *Burns Security Services*, above 406 U.S. at 280, fn. 4. The factors include whether the business is essentially the same, whether the employees of the new company are doing the same jobs under the same supervisors, and whether the new entity has the same production process, produces the same products and has the same body of customers. These factors are assessed primarily from the perspective of the employees, that is whether those employees, who have been retained will view their job situation was essentially unaltered. *Hydrolines*, above, at 421.

Here, Respondent Budget as a successor to the nursing functions was engaged in essentially the same business as predecessor Sprain Brook. Budget hired a majority of the former nursing staff, none of the work assignments were changed and the employees performed the same job functions (GC Exh 79: Budget hired 48 of predecessor Sprain Brook nursing staff, had the same supervisors, and maintained a majority of the predecessor in a proper unit performing the same work under the same conditions). Based upon the evidence, I find that Budget is a *Burns* successor.

The Union made a demand for bargaining in its letter to Budget on October 8, 2012, in which it asked the Respondent to recognize and bargain with the Union, and restore to the employees their former terms and conditions of employment. No response was received from Budget to this request.

[49] As noted above, nonparty Confidence was initially the first employer of the housekeeping employees in September 2012 and replaced by Respondent CBM in July 2013. As a successor employer, CBM had an obligation to bargain with 1199 SEIU. As of October 1, 2014, Budget was a successor to CBM as an employer with a bargaining obligation to 1199 SEIU.

Accordingly, I find and conclude that Respondent Budget is the legal successor to Sprain Brook regarding the nursing staff. *Pressroom Cleaners*, above at 32; *Mammoth Coal*, above at 689; *Planned Building Services*, above at 674; *New Concept Solutions*, 349 NLRB at 1157; *Love's Barbeque Restaurant*, 245 NLRB 78, 82 (1979).

Similarly, Respondent CBM was the successor to non-party Confidence regarding the housekeeping and maintenance staff. Confidence did not contest the General Counsel's argument that it was a successor to Sprain Brook.[50] CBM re-employed a majority of the employees formerly employed by Confidence. The record shows that CBM employed five of the six employees of a six-person housekeeping unit who had previously worked for Confidence (GC Exh. 77). The Union made a demand to CBM to bargain on July 18. 2013. CBM never responded to the Union. Finally, in October 2014, Respondent Budget assumed the housekeeping functions once the CBM contract was not renewed. At that point Budget became a successor to the housekeeping employees, after hiring 10 of the 12-person unit who had worked for CBM.

Based upon the foregoing, I find and conclude that Respondents Budget and CBM, as *Burns* successors, violated Sections 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union. Accordingly, the Respondents, as statutory successors, were obligated to recognize and bargain with the Union. See *NLRB v. Burns Security Services*, above; *Pressroom Cleaners*, above, at 34; *Love's Barbeque Restaurant,* above.

V. The Joint Employer Relationship

The General Counsel argues that Respondents Sprain Brook and Budget were joint employers of the nursing employees as of September 13, 2012, and of the housekeeping and maintenance employees on or about October 1, 2014. It is also argued that Respondents Sprain Brook, Budget, and Pinnacle were joint employers in the employment of the dietary employees as of September 13, 2012. The Respondents denied that they acted as joint employers.[51]

Discussion and Analysis

In *TLI, Inc.*, 271 NLRB 798 (1984), the Board adopted the Third Circuit's test in *NLRB v. Browning-Ferris Indus.*, 691 F.2d 1117 (3d Cir. 1982), for determining whether two separate corporations should be considered to be joint employers with respect to a specific group of

[50] As noted above, Confidence settled with the General Counsel and is not a Respondent in these proceedings. Nevertheless, the record shows that Confidence employed nine of the 11-person housekeeping unit previously employed by Sprain Brook (GC Exh. 78). Credible testimony by Nicholson and Nogueira shows that they performed the same job functions; had the same production processes; shared a community of interest; and essentially viewed their jobs as unaltered.

[51] In *NLRB v. Denver Construction Trades Council*, 341 U.S. 675 (1951), the Supreme Court held that a general contractor and its sub-contractor were not joint employers and constituted separate persons under Sec. 8(b)(4)(B) of the Act, even if the former exercised some degree of control over the operations of the latter at a construction site. The Court stated; "We agree with the Board also in its conclusion that the fact that the contractor and subcontractor were engaged on the same construction project, and that the contractor had some supervision over the subcontractor's work, did not eliminate the status of each as an independent contractor or make the employees of one the employees of the other."

employees. The test is. . . Where two (or more) separate entities share or codetermine those matters governing the essential terms and conditions of employment, they are to be considered joint employers for the purposes of the Act. The Board stated "the joint employer concept does not require the existence of a single integrated business enterprise." The concept recognizes that "the business entities involved are, in fact, separate but that they share or co-determine those matters governing the essential terms and conditions of employment." Id. (*quoting NLRB v. Browning-Ferris Indus.*, 691 F.2d 1117, 1123 (3d Cir. 1982)).

The Board disagreed with the administrative law judge's finding in *TLI, Inc.* that a joint-employer relationship existed between Crown Zellerbach Corporation (Crown), a paper products company that manufactures and distributes boxes, and TLI, Incorporated (TLI), a corporation that provides truckdrivers to Crown—as well as to other firms in the United States. Id. The Board held that Crown did not affect the terms and conditions of employment to such a degree that it may be deemed a joint employer because the drivers themselves select their own assignments based on seniority basis; Crown neither hires nor fires the drivers; and when a driver engages in conduct adverse to Crown's operation, Crown supplies TLI, not the employee with an "incident report" whereupon a TLI representative investigates—thus Crown has no disciplinary authority. Id. at 799.

In *Laerco Transportation*, 269 NLRB 324 (1984), the Board, referring to the *Browning-Ferris* test, defined the essential terms and conditions of employment as those involving such matters as hiring, firing, disciplining, supervision, and direction of employees. The Board stated that a joint-employer relationship exists where two or more business entities are in fact separate but they share or codetermine those matters governing the essential terms and conditions of employment. Moreover, "whether an employer possesses sufficient indicia of control over petitioned-for employees employed by another employer is essentially a factual issue." Id. "To establish joint employer status there must be a showing that the employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction." Id.

The Board did not agree with the administrative law judge and held that Laerco was not a joint-employer because although Laerco provided some minimal day-to-day supervision of the petitioned-for employees such supervision is of an extremely routine nature and all major problems relating to the employment relationship are referred back to CTL, the company which provided the employees. Id. at 326.

In *Teamsters Local 776 (Pennsy Supply)*, 313 NLRB 1148, 1162 (1994), the administrative law judge, in an opinion adopted by the Board, held that two companies were not joint employers despite a degree of authority exercised by one over the other. The judge stated:

> Evidence of minimal and routine supervision of employees, limited dispute resolution authority, and the routine nature of work assignments has been held insufficient to establish a "joint employer" relationship . . . .

On the other hand, evidence of substantial control over hiring, promotion, and the base wage rates, hours, and working conditions of employees, coupled with evidence of close and substantial supervision of employees, and constant presence of supervisors with a detailed awareness and control of employees' daily activities, has been held by the Board to be sufficient to establish a joint employer relationship. The Board found a joint employer relationship in *Continental Winding Co.*, 305 NLRB 122, 123 (1991), where even though one employer alone hired employees supplied to another and set and paid their wages, the record supported the judge's finding that the other employer to which the employees were supplied exercised sole authority to assign, schedule, and supervise the workplace conditions, and the performance of work by the employees. There, the Board said, the supervision was more than "routine" and was

not "insignificant."

The Board in *Branch International Services,* 327 NLRB 209, 219 (1998), affirmed the administrative law judge's finding that J&L and BISO were a joint employer where J&L was shown to have hired and directed the work of BISO's employees, and J&L established its own disciplinary system, which included an explicit provision for employee discharge. Moreover, the administrative law judge opined that a " joint employer finding is required in an employee leasing context where the employer to which the employees are leased meaningfully affects such matters relating to the employment relationship as hiring, firing, discipline, supervision, and direction." Id.; See also, *Continental Winding Co.,* 305 NLRB 122, 142 fn. 4 (1991) (the Board affirmed the judge's reasoning that where Continental exercised sole authority to assign, schedule, and supervise the Kelly employees, the day-to-day supervision by Continental over Kelly employees was more than "routine" and is not "insignificant."); also, *Teamsters Local 776 (Pennsy Supply)*, supra.

In *D&F Industries, Inc*., 339 NLRB 618, 640 (2003), the Board affirmed the administrative law judge's findings that D&F and Olsten were joint employers of temporary employees. Judge Burton based his finding on evidence that

> Olsten hires its own employees, maintains all employment records, is responsible for workplace injuries to its employees, and is responsible for disciplining its own employees; the work of the Olsten's temporary employees is of routine and repetitive nature and employees must report absences to Olsten's site manager, and D&F's supervision of Olsten employees is minimal, consisting of assigning them to their daily jobs, pointing out violations of D&F's workplace rules, and ensuring that they are performing their assigned tasks. However, D&F determined the number of available temporary employee job vacancies to be filled by Olsten hires; established the rates of pay for Olsten's employees and provided the funds from which they were paid; decided when overtime was required and the number of temporary employees necessary for such work; and was authorized to suspend Olsten's temporary employees from work. There was no evidence that Olsten was authorized to question, or ever questioned D&F as to its decision to layoff or terminate employees or its selection of employees for layoff.

Thus, the Board affirmed that D&F participated meaningfully in the exercise of control over matters governing the terms and conditions of employment of Olsten's temporary employers and at all times material, D&F and Olsten constituted joint employers. Id.

In *Airborne Freight Co*., 338 NLRB 597, 597–599 (2002), Chairman Liebman wrote a thoughtful concurrence where she expressed the need for the Board to revisit its standard for joint employer status to better prevent employers from escaping the compromise that the NLRA generally imposes on employers—the requirement to collectively bargain with employees. However, based on the current standard, the Board affirmed the administrative law judge, where he found that Airborne was not a joint employer and thus had no obligation to bargain with the union. The judge found there was no evidence to indicate that Airborne had "any say or influence in…decisions and no evidence to suggest that the hiring, disciplining, or firing of a contractor's employees was in any way under the control or even suggestion of Airborne." Id. at 604–606.

In *BFI Newby Island Recyclery*, 362 NLRB No. 186 (2015), the Board restated the joint-employer standard as reflected in the *TLI* and *Laerco* decisions, and reaffirmed that standard articulated in the Third Circuit *Browning-Ferris* decision[52], that is ". . . we will adhere to the Board's inclusive approach in defining the "essential terms and conditions of employment."

The Board's current joint-employer standard, articulated in *TLI*, supra, refers to "matters relating to the employment relationship *such as* hiring, firing, discipline, supervision, and direction," a nonexhaustive list of bargaining subjects. *TLI*, supra, 271 NLRB at 798. See, *Browning-Ferris*, at fn. 2. The Board went on to state,

> Under this standard, the Board may find that two or more statutory employers are joint employers of the same statutory employees if they "share or codetermine those matters governing the essential terms and conditions of employment." In determining whether a putative joint employer meets this standard, the initial inquiry is whether there is a common-law employment relationship with the employees in question. If this common-law employment relationship exists, the inquiry then turns to whether the putative joint employer possesses sufficient control over employees' essential terms and conditions of employment to permit meaningful collective bargaining. Central to both of these inquiries is the existence, extent, and object of the putative joint employer's control.

The Board stated that since the *TLI* and *Laerco* decisions, additional requirements for finding joint-employer status were imposed, which it has never articulated how these additional requirements are compelled by the Act and appear inconsistent with prior case law that has not been expressly overruled.[53] The Board specifically rejected those limiting requirements,

> We will no longer require that a joint employer not only *possess* the authority to control employees' terms and conditions of employment, but also *exercise* that authority. Reserved authority to control terms and conditions of employment, even if not exercised, is clearly relevant to the joint-employment inquiry. Nor will we require that, to be relevant to the joint-employer inquiry, a statutory employer's control must be exercised directly and immediately. If otherwise sufficient, control exercised indirectly—such as through an intermediary—may establish joint-employer status.

a. The Respondents Sprain Brook, Pinnacle and Budget are Joint Employers of the Dietary Aides and Cooks

Respondent Sprain Brook claims that it only employed management employees as of September 13, 2012. Respondent Pinnacle claims that its contract with Respondent Sprain Brook only covered the management employees in the dietary and cooking functions of the

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[52] *NLRB v. Browning-Ferris Industries of Pennsylvania, Inc.*, 691 F.2d 1117 (3d Cir. 1982), enfd. 259 NLRB 148 (1981).

[53] The Board stated that ". . . these additional requirements—which serve to significantly and unjustifiably narrow the circumstances where a joint-employment relationship can be found—leave the Board's joint-employment jurisprudence increasingly out of step with changing economic circumstances, particularly the recent dramatic growth in contingent employment relationships. This disconnect potentially undermines the core protections of the Act for the employees impacted by these economic changes. . . Our aim today is to put the Board's joint-employer standard on a clearer and stronger analytical foundation, and, within the limits set out by the Act, to best serve the Federal policy of "encouraging the practice and procedure of collective bargaining,"" thus, echoing Chairman Liebman in her concurring opinion in *Airborne Express*, above.

facility. Both entities deny employing any dietary aides and cooks on September 13. Respondent Budget Services also deny employing any dietary aides and cooks at any time. If one is willing to accept the untenable arguments of the three Respondents, the illogical conclusion would be that the dietary aides and cooks worked for no employer after September 12, 2012.

Respondent Sprain Brook is engaged in the business of patient care in a nursing healthcare facility. Pursuant to an agreement with Sprain Brook, Respondent Pinnacle provides all the necessary management, food, and supplies necessary to perform the food service operations at the facility. Respondent Budget Services is a professional service organization and denies having any employees except those performing payroll services for clients. Unlike Pinnacle, Respondent Budget did not have a contract to provide any services in the food operations at the facility.

Under *Laerco*, the joint employer concept recognizes that two or more business entities are in fact separate but that they share or codetermine those matters governing the essential terms and conditions of employment. As stated in *Laerco* at 324 NLRB 324, 325, the test is

> Whether an employer possesses sufficient indicia of control over petitioned-for employees employed by another employer is essentially a factual issue. To establish joint employer status there must be a showing that the employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction.

In my opinion, I find that Respondents Sprain Brook, Pinnacle, and Budget were joint employers of the dietary aides and cooks consistent with the legal framework articulated *TLI* and *Laerco*.

With regard to the dietary aides and cooks, I find that the undisputed record shows Respondent Sprain Brook executed a contract with Respondent Pinnacle on June 27, 2012, with an effective of August 1, 2012, to manage the dietary and cooking functions. The subcontracting occurred prior to the claimed date of September 13, 2012, when Respondent Sprain Brook became a successor. Respondent Pinnacle maintains that the June 27 contract with Respondent Sprain Brook was not a valid agreement and the only valid agreement is the one signed on September 13 between Stein and St. Pierre (P Exh. 6).

However, I find that the logical and reasonable conclusion is that the June 27 contract between Respondent Sprain Brook and Pinnacle was a valid contract. A copy of the contract shows that Stein did in fact sign his name, albeit, on his title line instead on the signature line. Stein's title on June 27 was "President" of Sprain Brook. The contract was also signed by the Weiss, as the authorizing representative of Pinnacle (GC Exh. 16). I also credit the testimony of Warren and others who had observed Ward, the Pinnacle dietary director, working at the Sprain Brook premises prior to September 12.

The June 27 contract granted exclusive rights to Pinnacle to manage and operate the dietary department at the nursing facility. Pinnacle denied recruiting, hiring or employing employees at the Sprain Brook facility except for nonmanagement personnel. However, the contract clearly states that Pinnacle ". . .shall assume payroll and benefit responsibilities for the facility's non-management dietary employees, including the responsibility of recruitment, employment, promotion, layoff, termination of all dietary employees." Respondent Pinnacle also supervises and disciplines the nonmanagement employees under the contract.

At the same time that Pinnacle assumed the employees' payroll and benefits; the payroll records show that Respondent Sprain Brook was actually paying the salaries of the dietary

aides and cooks (GC Exhs. 82, 83). Indeed, Respondent Sprain Brook continued to pay the salaries of the dietary staff through the autumn of 2012 (GC Exh. 109).

Even if Respondents Pinnacle and Sprain Brook did not have a contract with the dietary aides and cooks on June 27, the record is clear that Respondents Pinnacle, Budget, and Sprain Brook were joint employers as of September 13. Each Respondent denied employing any dietary aides or cooks. However, each Respondent had the authority and exercise the management of nonmanagement employees, an element governing the essential terms and conditions of employment under the joint employer concept.

Carmen Smith attended the September 12 meeting where she was informed of her discharge. Smith was informed that she could be rehired and that Ward would be her new supervisor. Smith was told that Ward was the Pinnacle manager overseeing the dietary aides and cooks. However, Smith completed a job application with Budget. Smith was also subsequently provided an employer's time and attendance/tardiness policy in March 2013 that was given to her by a dietary supervisor who said it was from Respondent Budget (GC Exh. 31).

Warren and Smith both credibly testified that they were supervised by Pinnacle manager, Samantha Ward, at least 3 months prior to September 12. Warren insisted that he observed Ward working at Sprain Brook in a supervisory capacity. He stated that Ward worked as the dietary assistant manager for 3 months prior to September 12. Warren's testimony was corroborated by Nicholson, who recalled seeing and being supervised by Ward at the facility prior to September 12.

Many of the factors that have led the Board to find a joint-employer relationship exist in this case and I find that such a relationship existed between Sprain Brook, Pinnacle, and Budget. As noted by the Board in *Painting Co.,* 330 NLRB 1000, 1007 (2000), the relationship between a typical contractor/subcontractor is one in which the subcontractor undertakes to perform a particular task, as opposed to the situation herein in which Sprain Brook treated the arrangement as one in which Budget and Pinnacle jointly provided employees for Sprain Brook's use. Moreover, typically, a subcontractor provides at least some of the equipment and materials needed to do their job. Virtually all the equipment used by the Budget and Pinnacle employees to perform their jobs belonged to Sprain Brook.

Day-to-day control over labor relations was handled between Pinnacle and Budget. The dietary aides and cooks were offered employment by Pinnacle in their former positions but with different employment benefits. Warren testified that he was told Pinnacle would be hiring the dietary staff. There is nothing of record to shows that Respondent Sprain Brook had entered into a contract with Respondent Budget to manage the dietary and cooking functions of the facility.[54] Yet, Warren's job application stated that his employment was with Respondent Budget Services. Nicholson's offer of employment with Pinnacle also had the Budget Services, Inc. and address on his job application. Nevertheless, both individuals as well as the remaining dietary staff received purple uniforms with the "Pinnacle Dietary" logo embossed on the shirts. Warren and Nicholson's wage rates were dictated by Pinnacle based upon its contract with Sprain Brook. Ward informed them that their hourly wage rate would be reduced to $10 dollars per hour and other benefits eliminated.

Warren was discharged by Ward, a Pinnacle manager, and rehired by Respondent Budget to the same position. After Warren was discharged, he received a letter from Respondent Budget to inform him that there was a full-time vacant position at the Sprain Brook

[54] The record is void of any evidence to establish that Pinnacle had a separate contract with Budget to manage the dietary and cook functions.

facility and asked if he was interested in the position he formerly held at the same hourly rate with retention of his prior seniority. The record reflects his job application was captioned "Pinnacle Employment Application" but completed a second application captioned "Employment Application, Budget Services, Inc." (GC Exhs. 37 and 38). Nicholson also completed a Budget job application for a dietary aide position with Pinnacle and was discharged by Ward. Nogueira credibly testified that she was discharged by Perez, the regional manager of Confidence, after Stein complained to him that she was allegedly "harassing" other employees. Perez credibly testified that he was instructed to discharge Nogueira at the insistence of Stein and done so contrary to his understanding of Confidence's policy in disciplining employees.

Anthony Scierka testified that the Pinnacle managers supervised the staff hired by Budget to work in the dietary department. Scierka states that if a dietary manager observes a health violation or infraction, there is a Budget cosupervisor that would conduct any progressive discipline on the employee. Scierka believe that any supervisor or manager, including the Pinnacle director and assistant director has the authority to issue discipline to a nonmanagement dietary employee working for Respondent Budget Services at Sprain Brook.

Moreover, Respondent Sprain Brook's authority and control over the unit employees was also not insignificant. Stein stated that if Respondent Sprain Brook determines that an employee contracted by another company was not performing in a satisfactory manner (based upon the facility's performance standard), Respondent Sprain Brook could demand another employee. Respondent Sprain Brook also had a significant role exercising control over the unit employees. Stein testified that he conveys to Pinnacle managers when a dietary aide's performance does not meet the standards established by Respondent Sprain Brook and appropriate actions would be taken with the employee based upon his comments.

There is little reason to doubt the credibility of the testimony of Warren, Nicholson, Nogueira, and Perez. Each witness testified that Respondent Sprain Brook, Budget, and Pinnacle had a substantial role and codetermined their hiring, discipline, and discharge, all major elements of their terms and conditions of employment.

Respondent Budget Services also denied employing any dietary aides and cooks at the Sprain Brook facility. Halverstam and Weber both stated that Respondent Budget Services is a professional employer organization and has no employees at the facility. Halverstam denied that Budget has any job applications or any employee manuals. Halverstam testified "We don't have any (Budget) Employees, per say (sic). Our clients have the employees submit an application. We don't have any employment applications" (Tr. 1139). Halverstam believed that the job application with the Budget name was generated by Pinnacle. Weber, the owner of Budget Services, insisted that Budget had only provided payroll services to Respondent Sprain Brook and categorically denied employing anyone at the Sprain Brook facility. Halverstam testified that Budget has no employees and therefore, there were no employment applications, work schedules, employer handbooks, policies, personnel files, union check-off information, nor information on managers and supervisors working at Sprain Brook.

Halverstam also denied any knowledge that Budget is a party to a collective-bargaining agreement with a labor organization. Halverstam denied knowledge as to why Budget Services paid the invoices that Respondent Local 713 charged to Respondent Sprain Brook and Pinnacle. Halverstam also denied knowing about any labor recognition agreement between Local 713 and Budget Services and denied knowing the reason for certain employment applications captioned with Budget's name as the employer.

In the instant case, there is no question that Budget performed most of the traditional human resource functions with regards to the housekeeping and dietary staff. Budget, among many items, paid its employees, provided health insurance, workers compensation insurance,

and deducted union dues. However, the payroll deductions, hours worked, vacation time, union dues, personnel policy, and other human resources functions were intrinsically tied between Budget and Pinnacle. Crystel Ploschke from Pinnacle testified that the dietary aides and cooks were hired by Respondent Budget Services and they are all Budget employees. But it was Ploschke's responsibility for reviewing all the time records, including vacation, sick leave and other accrued hours obtained through a Pinnacle kitchen manager. Upon completion of Ploschke' s review of the records, only then she would forward the information to Budget to issue the paychecks for its employees. It was also Pinnacle, through Ploschke, that made sure that proper union dues were deducted and other union benefits from Local 713 were accounted for in the paychecks of the dietary and housekeeping staff.

In addition, an employee manual titled "Budget Agency d/b/a Pinnacle Dietary Non-Exempt Employee Manual" was introduced by the General Counsel demonstrating one element of codetermination over employees' terms and conditions of reemployment by all three Respondents, but none of the Respondents adequately explained the reasons for having this manual (GC Exh. 125). Carmen Smith testified that she received a time and attendance policy and rules that was issued to her and other dietary aides by Respondent Budget in 2013 (GC Exh. 31).

Further, there were sufficient indicia of control by Respondent Sprain Brook, Pinnacle and Budget over the dietary aides and cooks in the context of the collective-bargaining relationship with Local 713 to establish a joint-employer relationship. Ploschke states that Budget invoices Pinnacle for all employee labor deductions, such as workers' compensation, disability benefits and union dues. Ploschke states that Pinnacle is not a party to any collective-bargaining agreement with Local 713 or any other union, yet she was very familiar with the agreement and had experienced issues with the union regarding union benefits and the nonpayment of union dues by Budget. Ploschke also worked closely with Shaina Fekete from Budget Services regarding the proper deductions for union dues, raises for employees, and other payroll issues. For example, overtime earned was recorded by Pinnacle managers and paid by Budget to the employees, but any additional payroll expenses were approved and paid by Sprain Brook. Respondent Pinnacle would also receive a monthly invoice from Local 713 and Pinnacle pays the invoice and forwards the invoice to Budget for reimbursement. The invoices from Local 713 were billed to both Respondent Sprain Brook and Pinnacle and Sprain Brook ultimately reimbursed the contractors pursuant to their agreements.

The testimony of Weber and Halverstam is given little credible weight in this area. Both testified that Budget Services did not have any employees at the Sprain Brook facility. However, Weber subsequently stated that the CNA, LPN and housekeeping staff were Budget employees but denied hiring them. Weber testified that "Sprain Brook sends us the employee and we put them on our payroll and they become our employees." Weber also denied that these employees were supervised by Budget and stated that Budget did not employ any supervisors at Sprain Brook. Weber's testimony that Budget did not have any supervisors at the Sprain Brook facility is in direct contradiction to the testimony of Scierka on this point. Scierka testified that a Budget cosupervisor alongside with the Pinnacle manager was available to monitor and discipline the dietary aides. Weber also conceded that Budget has a collective-bargaining agreement with Local 713 but failed to recall when or how the agreement was negotiated.

It is undisputed that the major elements of the terms and conditions of employment of the dietary aides and cooks were codetermined by Respondents Sprain Brook, Pinnacle, and Budget. The acquisition and retention of the dietary aides' and cooks' employment was controlled by Sprain Brook, Pinnacle, and Budget. Pinnacle and Budget hired the employees provided by Sprain Brook. According to Weber, Sprain Brook sends the employees to Budget and they are placed on Budget's payroll. Pinnacle made the offers of employment, provided the

Pinnacle uniforms for those who were hired and set the initial terms of their employment. Pinnacle would hire and discharge the employees. Respondent Budget, in turn, rehired some of these dietary aides and cooks and provided the salary and benefits consistent with the collective-bargaining agreement with Local 713. All three entities have the authority and codetermined control over the employees.

The authority and exercise of control over these employees by Respondents Sprain Brook, Pinnacle, and Budget were far more significant than what the Board found in Laerco. In Laerco, the Board held that there were only minimal day-to-day supervision of the employees by Laerco and any major personnel problems were referred back to CTL for resolution. *Laerco*, above at 325, 326. Here, as described above, the Respondents had equal voice in the control, supervision, work assignments, discipline and removal of the dietary aides and cooks staff working at the Sprain Brook facility. As such, I find that Respondents Sprain Brook, Pinnacle, and Budget were joint employers during all relevant period of time regarding the dietary aides and cooks unit employees.

b. The Respondents Sprain Brook and Budget are Joint Employers of the Nursing Staff

Sprain Brook insists that all nursing and recreational functions were transferred to Respondent Budget and that Budget is the sole employer of the nursing staff. Respondent Budget asserts that it had no employees at the Sprain Brook facility. Budget maintains that it only performed "pure ministerial work" in connection with payroll for employees. Budget argues that "It was Sprain Brook that made all the decisions with respect to hiring of employees, supervising employees, disciplining employees. . . . ." (R. Budget Br. at 11).

In my opinion, I find that Sprain Brook and Budget were joint employers over the nursing staff. My review of the facts show that Respondent Sprain Brook possesses sufficient indicia of control over the nursing staff employed by Respondent Budget that ". . . meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction." *Laerco*, above at 325.

With regard to the nursing staff, Stein announced by letter on September 12 that Respondent Sprain Brook had contracted the nursing functions at the facility to Budget and Budget would rehire all CNAs and LPNs at their current wage rate if they choose to accept the job offer from Budget. Shelly Ann Williams, a CNA, testified that she received a discharge notice from Sprain Brook and an offer of employment as a CNA with Respondent Budget Services. The offer stated that upon acceptance of the offer, Williams' employment would continue without interruption and at her current wage rate. Williams said she completed a job application at the direction of the director of nursing, Amelia Mendizabal, and returned it to her. Williams testified that her work duties and hours did not change under the new ownership.

Paula Robinson provided testimony similar to Williams. Robinson has been a CNA with predecessor Sprain Brook since February 2004. She was asked to complete "some paperwork" by Mendizabal for her rehiring by Budget. Robinson completed her job application with Budget Services and testified that her hours and work duties did not change when she was hired. Sanchez, as the HR assistant and staff coordinator working for Respondent Sprain Brook would forward the job applications and other personnel information to Fekete at Budget.

Sanchez would also provide the time and attendance and payroll instructions to Fekete that she obtained from Nachfolger. On occasions, Sanchez was involved with Fekete regarding bounced checks received by a nursing staff employee or with an issue regarding an employee not receiving a wage rate increase (Tr. 1390–1397; GC Exhs. 86 and 87). Sanchez also played a role as the staffing coordinator. At the time, she was responsible for creating the work

schedules for newly hired CNAs in consultation with Mendizabal, the nursing director employed by Respondent Sprain Brook (Tr. 1388–1390).

Under the contract, I find that Respondent Sprain Brook and Budget codetermined the terms and conditions of employment of the nursing staff. Respondent Budget was responsible for the employees' wages, insurance, payroll taxes, unemployment insurance, disability benefits coverage and workers' compensation, and any other employee benefits provided under the contract. The payments of such benefits was provided by Budget and Budget would invoice Respondent Sprain Brook on a weekly basis on an agreed upon payment schedule. Any additional expenses incurred by Budget would be reimbursed by Sprain Brook under their contract (GC Exh. 19(a).

I find it significant to note that the contract further stated that Respondent Budget retains

> …[t]he authority to hire, terminate and discipline the personnel (LPN and CNA) provided under this agreement. However, the client (Respondent Sprain Brook) retains the right to refuse to permit services performed herein by any of the contractor's employees if the client (Respondent Sprain Brook) has not authorized the services of such employees or considers such employees unqualified to provide such services or determines that the services being provided are not to the Client's satisfaction…

Respondent Budget did not have a manager or supervisor at the Sprain Brook facility to supervise the nursing staff. The nursing staff accepted work assignments and schedules from Mendizabal and Sanchez, both Sprain Brook management personnel. Stein stated if the director of nursing (a Sprain Brook employee) is not satisfied with the work performance of a CNA or LPN, the director would contact Budget for another employee. In turn, Respondent Budget would be responsible for discharging the employee and provide Sprain Brook with another employee. The nursing director, Mendizabal, was a Sprain Brook employee and directly responsible for supervising the nursing staff. Sprain Brook managers arrange for the work schedules, assignments, and monitor the daily activities of the nursing staff.

As noted above, Estefany Sanchez is employed by Respondent Sprain Brook as a HR assistant and staffing coordinator and responsible for ensuring that the job applications and resumes of the nursing candidates were complete. She worked closely with Mendizabal in scheduling job interviews with the candidate. Sanchez said that after the candidates were interviewed, she would forward the application to Respondent Budget because Budget was the employer of the nursing staff. Sanchez also played a role as the staffing coordinator and was responsible for creating the work schedules for newly hired CNAs in consultation with Mendizabal.

Sanchez communicates with Shaina Fekete from Budget Services on occasions regarding payroll issues by the nursing staff. Sanchez said that she was responsible for ensuring that the hours worked by the nursing staff matches up with the clock-in and clock-out time. Nachfolger provides Sanchez with the time and attendance and payroll instructions. Nachfolger determines each employee's number of hours work, vacation time, overtime hours, and any time and attendance adjustments. Sanchez would relay this information to Fekete to pay the nursing staff. Nachfolger would also initiate and approve bonuses for the nursing staff and would inform to Fekete to ensure that Budget cuts the checks for the bonuses consistent with his instructions (GC Exhs. 98 and 99).

I find and conclude that Respondents Sprain Brook and Budget codetermine and share the essential terms and conditions of employment of the nursing staff employees. Here, the contract permits Respondent Sprain Brook to determine whether a nursing employee is meeting the standards of the facility. Stein's own testimony shows that Respondent Sprain Brook may

remove a nursing employee for performance issues and Budget would be responsible for discharging or disciplining that employee. Under the contract, Respondent Budget also had the authority to hire, terminate, and discipline the nursing personnel.

The director of nursing, a Sprain Brook employee along with the Sprain Brook HR assistant, provided the Budget job applications, interviewed and hired the nursing staff. Respondent Budget did not make any changes to the terms and conditions of employment and any wage rate or other employee benefits were dictated by Sprain Brook. The working hours and schedule of the nursing staff were determined by Sanchez and Mendizabal. Sanchez and Fekete worked closing in ensuring the correct time and attendance hours of the nursing employees and the proper wage rate was applied. Based on the foregoing, and relying particularly on the significant nature of Respondent Sprain Brook's supervision of the nursing staff, the evidence overwhelmingly demonstrates a joint-employer relationship between Sprain Brook and Budget Services.

c. The Respondents Sprain Brook and Budget are Joint Employers of the Housekeeping and Maintenance Staff

The General Counsel alleges that Respondent Sprain Brook and Budget were joint employers over the housekeeping and maintenance staff starting in October 2014. Respondent Sprain Brook executed a contract on September 16, 2012, with Confidence for providing all the necessary management, which includes a housekeeping director and regional manager, to oversee the housekeeping operation. Respondent Sprain Brook replaced Confidence and signed a contract with Respondent CBM, effective from July 1, 2013, through July 1, 2014.

Effective October 1, 2014, CBM was replaced by Respondent Budget for the housekeeping functions.[55] As noted above, the General Counsel was unable to obtain a copy of the Sprain Brook-Budget contract for the housekeeping functions. It is also unclear as to which entity actually supervised the housekeeping staff. Respondent Sprain Brook argues that the hiring, discipline and firing of employees was the responsibility of Respondent Budget because the housekeepers were employed by Budget. Respondent Budget argues that it had no employees working at the Sprain Brook facility and was only involved in the payroll aspects for the housekeepers.

In my opinion, it is clear that Respondent Sprain Brook codetermined with Budget Services over the essential terms and conditions of employment of the housekeeping and maintenance staff. Respondent Sprain Brook was responsible for hiring the housekeeping and maintenance staff after contracting out those functions to Respondent Budget. Further, Respondent Sprain Brook dictated to Budget the employees that would be absorbed by Budget and set the terms and benefits of their employment at Budget. Respondent Sprain Brook instructed Budget as to the wages paid and the deductions taken for the housekeeping staff. Respondent Sprain Brook supervised and provided the work assignments to the housekeeping staff through the Mushell, the facility administrator.

Although a contract between Respondent Sprain Brook and Budget was not obtainable by the General Counsel, I would surmise that the terms of the contract for the housekeeping functions would be similar to the contracts with CBM and Confidence. Under those contracts, the subcontractors provided all the necessary housekeeping services, including the employees, management, and supplies. The owner of Budget, Weber, stated that the housekeeping staff were Budget employees but denied hiring them. Weber testified that "Sprain Brook sends us

[55] The General Counsel has not alleged that Respondent CBM is a joint employer with Sprain Brook or with Budget Services.

the employee and we put them on our payroll and they become our employees."

Weber also denied that these employees were supervised by Budget and stated that Budget did not employ any supervisors at Sprain Brook. To that extent, Weber's testimony has some credibility in asserting that the hiring was done by Sprain Brook and that there were no Budget supervisors at the Sprain Brook facility for the housekeepers. This is consistent with one of the General Counsel's witnesses. Gjelaj credibly testified that it was Mushell, the Sprain Brook administrator, who instructed her and other housekeepers to complete the Budget job application and the union authorization cards for Local 713. Gjelaj was also instructed by Mushell to perform additional housekeeping assignments. There is no reason to discount her testimony especially since it was not rebutted by the Respondents.

Moreover, Respondent Sprain Brook dictated to Budget the compliment of housekeeping employees that Budget would be accepting on its payroll. Respondent Sprain Brook communicated with Budget that there were two maintenance employees that where not hired by Sprain Brook (GC Exh. 100). Respondent Sprain Brook, through Nachfolger, also informed Budget that the entire housekeeping department would be moved over to Budget (GC Exh. 101). There were no objections, approval or agreement for this arrangement by Budget. It was simply accepted by Budget. Finally, Respondent Sprain Brook dictated the employees' wage rate, bonuses, and to ensure that the rate of pay, vacation time, overtime, and other employee emoluments were correctly recorded by Budget (testimony of Sanchez, Fekete, and Ploschke).

Here, as in *D&F Industries, Inc*., above at 640, Respondents Sprain Brook and Budget were joint employers based upon the evidence that Respondent Sprain Brook hires its own employees, maintains all employment records, is responsible for workplace injuries to its employees, determines the number of employees to be filled by Budget, and is responsible for disciplining its own employees. Weber insisted that the housekeeping staff was Budget's employees. The housekeeping staff was supervised by the Sprain Brook administrator. It is clear that Respondent Budget codetermined with Sprain Brook the essential terms and conditions of employment to the extent that both companies dictated the terms and conditions of employment for the housekeeping and maintenance staff.

Accordingly, based upon the foregoing, I find that Respondents Sprain Brook and Budget jointly employed the housekeeping and maintenance staff.

d. The Retroactive Application of the Board's Decision in BFI Newby Island Recyclery

In supplemental briefs submitted by the parties, the General Counsel argued that the standard established by the Board for determining joint employer status under *BFI Newby Island Recyclery* should be retroactively applied in this decision. The General Counsel further argued that even if not applied retroactive, a joint employer status among the Respondents were nevertheless established under *TLI* and *Laerco*. The Respondent argues to the contrary.

In *Fedex Home Delivery*, 362 NLRB No. 29 (2015), that Board held that the ". . . usual practice is to apply new policies and standards "to all pending cases in whatever stage" citing, *Deluxe Metal Furniture Co.,* 121 NLRB 995, 1006–1007 (1958). In *Securities & Exchange Commission v. Chenery Corp.*, 332 U.S. 194, 203 (1947), the Supreme Court has instructed that in determining whether to apply a change in law retroactively, it is necessary to balance the adverse consequences of retroactivity, if any, against "the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles."

In determining whether the ". . . retroactive application of a Board decision will cause manifest injustice, the Board balances three factors: (1) the reliance of the parties on preexisting

law; (2) the effect of retroactivity on accomplishment of the purposes of the Act; and (3) any particular injustice arising from retroactive application." *Fedex Home Delivery*, above, citing *Machinists Local 2777(L-3 Communications),* 355 NLRB 1062, 1069 fn. 37 (2010).

Such a balancing test applied here leads to the conclusion that the Board's usual practice of retroactive application is appropriate. In applying the *Chenery* balancing process, the retroactive application of the *BFI Newby Island Recyclery* would not work a "manifest injustice." *Pattern Makers (Michigan Model Mfrs.)*, 310 NLRB 929, 931 (1993). Regarding the first factor, I find that the Board's approach in *BFI Newby Island Recylery* did not represent a marked departure from *TLI* and *Laerco*. Indeed, the Board reasserted the principles in *TLI* and *Laerco* and expressly rejected the additional requirements subsequent to these two cases. Regarding the second factor, I find that the Board in *BFI Newby Island Recyclery* aided in accomplishing the purposes of the Act by clarifying and reasserting the Board's long-held joint employer standard. Regarding the third and final factor, I do not find any particular injustice arising from the retroactive application.

The General Counsel correctly argues that even under pre-*BFI Newby Island Recyclery*, joint-employer status was established among Respondent Sprain Brook, Pinnacle, and Budget over the dietary and cooking staff and between Sprain Brook and Budget with the nursing and housekeeping unit employees. The retroactive application of the *BFI Newby Island Recyclery* standard would not have changed my own analysis of the joint-employer status among the Respondents inasmuch as I had analyzed the joint-employer status of the Respondents under the pre-*BFI Newby Island Recyclery* standard. Accordingly, while I believe that the retroactivity standard as set forth in *Fedex Home Delivery* and *Machinists* is applicable here, I do not find it necessary to retroactively apply the *BFI Newby Island Recyclery* standard in finding that the Respondents were joint employers.

VI. The Refusal and Failure to Bargain

The General Counsel argues that Respondents Sprain Brook, Pinnacle, and Budget as joint employers regarding the dietary aides and cooks had an obligation to bargain with 1199 SEIU before setting initial terms of employment or making unilateral changes in their terms and conditions of employment in violation of Section 8(a)(5) and (1) of the Act.

With regard to the housekeeping and maintenance staff, the General Counsel argues that Respondent CBM was a *Burns* successor with an obligation to bargain with the Union on or about September 13, 2012.[56] The General Counsel further maintains that Respondent Sprain Brook and Budget were joint employers as of October 2014 with an obligation to bargain with 1199 SEIU before making setting initial terms of employment and unilateral changes to the housekeeping employees' terms and conditions of employment.

With regard to the nursing staff, the General Counsel maintains that Respondent Sprain Brook and Budget as joint employers made initial unilateral changes to their terms and conditions of employment without bargaining with the Union over these initial terms and changes.

As noted above, even assuming that Sprain Brook and Budget were not joint employers, the General Counsel argues in the alternative that Budget was a successor employer of the nursing staff unit as of September 13, 2012, with a bargaining obligation to the Union and a

[56] The only violation of the Act argued by the General Counsel with regard to Respondent CBM is its failure to bargain with the Union when CBM became a successor of the housekeeping staff on September 13.

successor employer of the housekeeping staff as of October 2014 with an obligation to bargain over terms and conditions of employment with the Union.[57]

Discussion and Analysis

Where the parties are negotiating a collective-bargaining agreement, the employer has an obligation to refrain from implementing unilateral changes unless and until agreement or an overall impasse is reached. *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991). Moreover, an employer is obligated to notify the employees' exclusive collective-bargaining representative and afford the representative an opportunity to bargain about the changes. The notice given must be sufficient to allow a meaningful opportunity to bargain before the changes are implemented. An employer violates Section 8(a)(5) and (1) if it makes a unilateral change in a mandatory subject of bargaining without first giving the Union notice and an opportunity to bargain. See *NLRB v. Katz*, 369 U.S. 736, 743 (1962). Under Section 8(d), "wages, hours, and other terms and conditions of employment" are mandatory subjects of bargaining.

The Board has also held that an employer commits an unfair labor practice if, without bargaining to impasse, it effects a material and substantial unilateral change of an existing term or condition of employment. *Katz*, above. In *Katz*, as in here, the Union was newly certified and the parties had yet to reach an initial agreement. An employer is required to bargain with its employees' exclusive collective-bargaining representative when making a material and substantial change in wages, hours, or any other term of employment that is a mandatory subject of bargaining under Section 8(a)(5) and (1) of the Act.

a. Respondent Sprain Brook Violated Section 8(a)(5) and (1) of the Act By Refusing and Failing to Bargain with 1199 SEIU

Paragraph 7 of the amended complaint alleges that Respondent Sprain Book failed and refused to recognize and bargain collectively with the 1199 SEIU as the exclusive collective-bargaining representatives of unit employees. The complaint further alleges that Respondent Sprain Brook made unilateral changes by discharging all 1199 SEIU bargaining unit employees and contracting out the bargaining unit work in violation of Section 8(a)(5) and (1) of the Act.[58] The complaint in paragraph 9 also alleges that Respondent Sprain Brook unilaterally denied 1199 SEIU access to the facility in violation of Section 8(a)(5) and (1).

[57] The General Counsel did not argue that Pinnacle was a successor employer of the dietary aides and cooks (GC Br. at fn. 22).

[58] Par. 6(c) identified the dietary unit employed by Respondent Sprain Brook as "All full-time and regular part-time and per-diem dietary aides and cooks employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act." Par.6(g) identified the nursing unit employed by Respondent Sprain Brook as "All full-time and regular part-time and per-diem licensed practical nurses, certified nurses' aides, and geriatric techs/activity aides, employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers, guards, professional employees and supervisors as defined by the Act." The housekeeping unit is identified as "All full-time and regular part-time and per-diem housekeeping employees and laundry employees/assistants employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors defined under the Act."

As stated in *Burns* and *Fall River Dyeing*, above, where, as here, there is a substantial continuity between the predecessor's operations and a majority of its former employees, it is in the interest of the Act's policy to promote stability in collective-bargaining relationships and preserving industrial peace by imposing bargaining obligations. The successorship doctrine serves the policies of the Act by preserving stability in the collective-bargaining relationships and preserving industrial peace.

On September 29, 2006, the Board determined that 1199 SEIU was the exclusive bargaining representative for the unit employees at the predecessor Sprain Brook facility. As of June 15, 2012, 1199 SEIU continued to be the exclusive bargaining representative with Respondent Sprain Brook as the successor to the business.

Respondent Sprain Brook and 1199 SEIU were engaged in active bargaining during most of the transition period. There were 16 bargaining sessions between July 2008 and June 2011 between 1199 SEIU and predecessor Sprain Brook. Speller met Moses Strulovitch at a bargaining session as early as 2008 and Strulovitch was introduced to him as "somebody who was helping to manage Sprain Brook and also a prospective buyer. . . " In my opinion, the first bargaining session between 1199 SEIU and Respondent Sprain Brook occurred at the July 14, 2009 bargaining session when Stein was introduced to Speller and the 1199 SEIU bargaining team.

Even if it cannot be said that July 2008 was the period that principals for Respondent Sprain Brook took over the negotiations, I find it extremely credible that July 14, 2009, was the date when Respondent Sprain Brook became earnestly involved in the bargaining negotiations. The July 14 date was approximately 1 month prior to the August 2009 sales agreement signed by Klein and the estate of Book with LNS. As such, Stein as a partner of the buyer, LNS, had a vested financial interest during the July/August timeframe to be materially involved in the bargaining negotiations and several factors showed that he was.

Speller credibly said that Stein was introduced to him as someone working with Strulovitch to manage the nursing home and as one of the prospective buyer of the home. Stein denied that he was the chief member of Respondent Sprain Brook's bargaining team. On this point, I find that Stein was not credible in explaining that he was a mere agent or delegate of Klein in the negotiations. It was not credibly disputed that Klein was never present at any bargaining sessions and the record is void of any evidence that Klein had provided instructions to Stein or proposals for bargaining.

On the other hand, I find very credible the testimony of Speller and Nogueira that Stein held himself out during the negotiations as the new owner. I credit Speller and Nogueira testimony that Stein repeatedly stated that he wanted a contract and a good working relationship with the Union. Speller's credibility is buttressed by the active role taken by Stein in the negotiations. Stein invited Speller to a meeting at a restaurant on September 16, 2009. Stein repeated that he wanted a good working relationship with the Union. Stein had already elevated Nachfolger from his payroll clerk position and had him negotiate with Speller. Stein put Nachfolger in contact with Speller on the following day to continue discussions on a bargaining contract. According to Speller, he was informed by Nachfolger that he had experience in working with 1199 SEIU at other nursing facilities.

The parties met at a bargaining session on September 22 and Speller met Stein and Nachfolger at this session. Subsequently Speller and Nachfolger exchanged emails on September 23 as a follow up to the session. At this point, Nachfolger was actively participating as member of the Respondent Sprain Brook bargaining team and was more than a mere payroll clerk. Speller testified to a subsequent bargaining session with Stein and Nachfolger on October 19, 2009. Stein and Nachfolger presented a counter proposal received on October 19.

Speller stated that bargaining continued through 2010 and at a session in August 2010, Speller was informed that a certificate of need was filed with the New York State Health Department by the buyers of Sprain Brook. There were also discussions during this session and one in December 2010 about negotiating the subcontracting of the laundry department. The Union opposed the subcontracting and ultimately, the Union agreed to have the one remaining laundry employee (Nogueira) reassigned to the housekeeping department.

Throughout the bargaining sessions from July 2009 to June 2011, the parties continued to bargain. Speller inquired numerous times about the status of the sale of the facility and a closing date for the sale but no answers were forthcoming. Bargaining between 1199 SEIU and the principal agents for Respondent Sprain Brook abruptly ended in 2011. Speller testified that the last bargaining session occurred on June 2, 2011. The parties never reached a negotiated contract, but continued to discuss a resolution of several unfair labor practice violations against the nursing facility. No explanation was provided as to Respondent Sprain Brook's refusal to continue bargaining with 1199 SEIU after June 2011.[59]

Accordingly, I find that Respondent Sprain Brook refused and failed to recognize and bargain with 1199 SEIU as the exclusive bargaining representative for the unit employees described above violated Section 8(a)(5) and (1) of the Act.

b. Respondents Pinnacle, Budget and CBM Violated Section 8(a)(5) and (1) of the Act By Refusing and Failing to Bargain with 1199 SEIU

The complaint alleges that Respondents Pinnacle, Budget, and CBM failed and refused to recognize and bargain collectively with 1199 SEIU as the exclusive collective-bargaining of the dietary and housekeeping unit employees.

Prior to the discharge of unit employees, Respondent Sprain Brook entered into a contract agreement with Pinnacle on June 27, 2012, with an effective date of August 1, to manage and oversee the dietary and cooking staff working at the Sprain Brook facility. Respondent Sprain Brook entered into a second contract with Pinnacle on September 13. The terms of both contracts are identical except for the date and without Stein's signature on the first contract. Respondent Sprain Brook subcontracted the nursing functions to Budget on an unspecified date but effective on September 16, of the nursing staff, to include LPNs and CNAs. Finally Respondent Sprain Brook entered into a contract agreement with Confidence on September 16 to assume the housekeeping functions at the facility. Respondent Sprain Brook replaced Confidence with CBM on July 1 2013, and CBM was replaced by Budget Services on October 1, 2014.

In finding that Respondent Sprain Brook violated Section 8(a)(5) and (1) of the Act by refusing to recognize and an opportunity to bargain with the Union over substantial unilateral changes of existing terms and conditions of employment, I now find that Respondents Pinnacle, Budget, and CBM also violated Section 8(a)(5) and (1) of the Act when they refused to recognize and bargain with the Union before making unilateral changes to the terms and conditions of employment of the dietary aides and cooking staff.

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[59] The parties never reached lawful impasse in June 2011. To find impasse, the Board considers, among other things, the *Taft* factors: (a) the parties' bargaining history; (b) whether they negotiated in good faith; (c) the length of their negotiations; (d) the importance of the issues over which they disagreed; and (e) their contemporaneous understanding as to the state of their negotiations. *The Sheraton Anchorage*, 359 NLRB No. 95, slip op. at 44 (quoting *Taft*, 163 NLRB at 478). Respondent Sprain Brook never argued that the parties were at impasse consistent with the *Taft* factors.

As a defense, it is maintained by the Respondents that there was no legal obligation to bargain. Respondent Pinnacle maintains that it was not a joint employer with Respondent Sprain Brook and did not employ any employees working at the Sprain Brook facility. Respondent Budget also maintains that it was neither a joint employer with Sprain Brook nor a successor with an obligation to bargain. As already addressed by me above in finding that Sprain Brook, Pinnacle, and Budget were joint employers for the various different unit employees, it follows that Respondents Pinnacle and Budget were obligated to recognize and bargain with the Union. Similarly, CBM as a successor was also obligated to bargain with 1199 SEIU.

There are no factual dispute that Respondent Sprain Brook and Pinnacle, as joint employers, never provided notice to 1199 SEIU and an opportunity to bargain over the changes in the terms and conditions of employment of the dietary aides and cooks. It also not in dispute that Respondent CBM never provided notice and an opportunity to bargain over the changes in the terms and conditions of employment regarding the subcontracting of housekeeping functions. Similarly, it is not disputed that Respondent Sprain Brook and Budget, as joint employers, never provided 1199 SEIU with notice and the opportunity to bargain over the substantial changes in terms and conditions of employment of the nursing staff unit. Moreover, Respondent Sprain Brook and Budget did not provide notice to 1199 SEIU or an opportunity to bargain in regard to the terms and conditions of employment of the housekeeping and maintenance staff after Respondent Budget's commenced of such functions around October 2014 (Jt. Exhs. 1 and 2).

Accordingly, I find that Respondents Pinnacle, Budget, and CBM refused and failed to recognize and bargain with 1199 SEIU as the exclusive bargaining representative for the unit employees described above violated Section 8(a)(5) and (1) of the Act.

c. The Respondents Sprain Brook, Pinnacle, Budget, and CBM Violated Section 8(a)(5) and (1) of the Act by Making Unilateral Changes

The General Counsel alleges that Respondent Sprain Brook violated Section 8(a)(5) and (1) of the Act by subcontracting unit work without first providing 1199 SEIU notice and an opportunity to bargain over the contracting. The General Counsel maintains that subcontracting is a mandatory subject of bargaining. The General Counsel further alleges that Respondents Pinnacle, Budget, and CBM made unilateral changes without providing notice to 1199 SEIU and a good-faith opportunity to bargain over the changes.

Discussion and Analysis

In a unilateral-change case, "the relevant inquiry . . . is whether any established employment term on a mandatory subject of bargaining has been unilaterally changed." *Daily News of Los Angeles v. NLRB*, 73 F.3d 406, 411 (D.C. Cir. 1996), cert. denied 519 U.S. 1090 (1997). An unlawful unilateral change "frustrates the objectives of Section 8(a)(5)," because such a change "'minimizes the influence of organized bargaining' and emphasizes to the employees 'that there is no necessity for a collective bargaining agent.'" *Pleasantview Nursing Home v. NLRB*, 351 F.3d 747, 755 (6th Cir. 2003) (quoting *Katz*, supra at 744, and *Loral Defense Systems-Akron v. NLRB,* 200 F.3d 436, 449 (6th Cir. 1999)); *Mercy Hospital of Buffalo*, 311 NLRB 869, 873 (1993).[60]

[60] "Unilateral action by an employer without prior discussion with the union does amount to a refusal to negotiate about the affected conditions of employment under negotiation, and must of necessity obstruct bargaining, contrary to the congressional policy." *Katz*, supra at 747.

Continued

1. The Unilateral Change in Subcontracting the Unit Employees

The present situation is governed by the principles set forth in *Fibreboard*, and that the Respondents were under a legal obligation to afford the Union an opportunity to negotiate and bargain over the contracting. *Remington Lodging & Hospitality, LLC*, 363 NLRB No. 112 (2016).

In *Fibreboard Paper Products Corp. v. NLRB,* 379 U.S. 203 (1964), the Supreme Court held that a decision to subcontract bargaining unit work is a mandatory subject of bargaining where the employer is merely replacing employees in the bargaining unit with employees of an independent contractor to do the same work under similar working conditions. Id. at 215. See, also, *O.G.S. Technologies, Inc.*, 356 NLRB 642, 644-647 (2011) (subcontracting of bargaining unit die-cutting work to other firms); *Sociedad Espanola de Auxilio Mutuo y Beneficencia de P.R.*, 342 NLRB 458, 467-469 (2004), enfd. 414 F.3d 158 (1st Cir. 2005) (subcontracting of bargaining unit X-ray technician and respiratory therapy work performed in Respondent hospital); *Torrington Industries, Inc.*, 307 NLRB at 810–811; *St. George Warehouse, Inc.*, 341 NLRB 904 (2004), enfd. 420 F.3d 294 (1st Cir. 1005) (replacement of directly employed bargaining unit warehouse employees with temporary agency employees); *Regal Cinemas, Inc.*, 334 NLRB 304, 312–313 (2001), enfd., 317 F.3d 300 (D.C. Cir. 2003) (transfer of bargaining unit projectionist work to non-bargaining unit managers and assistant managers).

The Board stated in *Mi Pueblo Foods and International Brotherhood of Teamsters Local 853, a/w Change To Win*, 360 NLRB No. 116 (2014), that

> Under *Fibreboard,* supra, and *Torrington Industries*, 307 NLRB 809 (1992), the Respondent was required to bargain with the Union prior to contracting out this work. And bargaining is not excused simply because no driver was laid off or experienced a significant negative impact on his employment. In *Torrington*, the Board applied the Supreme Court's holding in *Fibreboard* that an employer has a duty to bargain over decisions to subcontract work when the employer replaces employees in the existing bargaining unit with those of a contractor to perform the same work. The Court explained that requiring bargaining under these circumstances would not abridge an employer's freedom to conduct its business, particularly when the subcontracting involved no capital investments or change in the company's basic operations. The Court reasoned that the factors driving the decision to subcontract, such as cost reduction through work force reduction, or decreasing fringe benefits or overtime, are matters "peculiarly suitable for resolution within the collective bargaining framework." Id. at 213–214.

Respondent Sprain Brook was under a legal obligation to bargain with 1199 SEIU concerning its unilateral decision to discharge and to subcontract unit work. The decision to use subcontractors to perform all the work by replacing the existing employees with those of an independent contractor to do the same work under similar conditions of employment and the basic business operation was not altered is a mandatory subject of bargaining. More so here than in *Fibreboard,* Respondent Sprain Brook did not simply replace the existing employees; Sprain Brook substituted one group of workers with the same group of workers performing the same work ostensibly under a different employer. The result was it paid an outside company to

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"'The vice involved in [a unilateral change] is that the employer has *changed* the existing conditions of employment. It is this *change* which is prohibited and which forms the basis of the unfair labor practice charge." *Daily News of Los Angeles*, 315 NLRB 1236, 1237 (1994) (Board's brackets) (quoting *NLRB v. Dothan Eagle, Inc.*, 434 F.2d 93, 98 (5th Cir. 1970) (court's emphasis)), enfd. 73 F.3d 406 (D.C. Cir. 1996), cert. denied 519 U.S. 1090 (1997).

perform essentially the same work its unit employees had previously performed. *See Acme Die Casting*, 315 NLRB 202 fn. 1 (1994).

The basic nature of the Respondent Sprain Brook's operations remained the same, as did the work of the unit employees. The same employees, now as employees for different contractors, were doing the identical work at the same facility and within the facility using the same tools and equipment to do so. *PCMC/Pacific Crane Maintenance Co*., 359 NLRB No. 136 (2013).[61] Sprain Brook was not changing the scope, nature, or direction of its business but, rather, shifting several integral components of its operations to other companies. "Contracting bargaining unit work under such circumstances by substituting one group of workers for another to perform the same work is clearly a mandatory subject of bargaining." *American Benefit Corp*., 354 NLRB 1039, 1051 (2010); citing *Fibreboard Paper* and *Spurlino Materials, Inc.*, 353 NLRB 1198, 1217 (2009).

Having already determined that Respondent Sprain Brook is a *Burns* successor, I now find that Sprain Brook unilaterally discharged all its employees on September 12, 2012, and subcontracted unit work without first providing notice and a good-faith opportunity to bargain over the discharges and subcontracting with 1199 SEIU in violation of Section 8(a)(5) and (1) of the Act. I would note that many of the changes Sprain Brook rely upon in arguing that it is not a successor were violations of Section 8(a)(5) of the Act. Respondent was not entitled to unilaterally discharge its unit employees and contract their initial terms and conditions of employment to third parties due to its illegal refusal recognize and bargain with the Union. It cannot rely on illegal unilateral changes to prove it is not a successor. *Precision Industries,* 320 NLRB 661, 711 (1996).

Here, 1199 SEIU was never informed of these changes in the term and condition of employment and was never provided an opportunity to bargain over these changes. Upon learning of the subcontracting from unit employees working at the facility, Speller wrote a letter to attorney Meyer on September 13, 2012, regarding sale of the facility and the subsequent subcontracting of the dietary, housekeeping and maintenance departments by Respondent Sprain Brook. In the letter, Speller requested to negotiate over the changes and information on the subcontracting. Speller never received a response from Meyer. Speller also sent a letter to Stein on October 8, 2012, protesting the unilateral changes in subcontracting the departments and requested to negotiate the changes and their effects.

Moreover, the actions of Sprain Brook by not providing notice to SEIU 1199 about the subcontracting and dismissing its employees one day prior to them being rehired by the contractors, is a clear indication that Sprain Brook was not intent on engaging in meaningful bargaining with 1199 SEIU and tantamount to a fait accompli. The announcement made directly to the employees that a change in a mandatory subject is being implemented—instead of proposing it to the employee's bargaining representative—suggests a *fait accompli* and is inconsistent with the duty to bargain. *Brannan Sand & Gravel Co.*, 314 NLRB 282 (1994). See also *Burrows Paper Corp.*, 332 NLRB 82, 83 (2000) ("after . . . announcement of the wage increase to employees, we find that the Union could reasonably conclude that the matter at this point was a fait accompli, i.e., that the Respondent had made up its mind and that it would be futile to object to the pay raises"); *Ciba-Geigy Pharmaceuticals*, 264 NLRB 1013, 1017 (1982) ("most important factor" dictating finding that employer's announcement of change was "fait accompli" was that it was made without "special notice" in advance to the union, the union's officers "having become aware of this merely because they themselves were employees"), enfd. 772 F.2d 1120 (3d Cir. 1983). In circumstances where it is clear that the employer has no

[61] Reconsidered by the Board de novo in light of *Noel Canning* and affirmed the judge's rulings, findings and conclusions at 363 NLRB No. 120 (2015).

intention of bargaining, the Board has found the implementation of the changes to be nothing more than *fait accompli. Ciba-Geigy Pharm. Div.* 264 NLRB 1013, 107 (1982); *FirstEnergy Generation Corp. and International Brotherhood of Electrical Workers, Local Union* (2012).[62]

2. The Unilateral Changes to Wages, Work Schedules and Assignments

Paragraph 9(b)(i) of the complaint alleges that

> On or about September 12, 2012, Respondents Sprain Brook Rehab and/or Pinnacle, as joint employers, made changes to the terms and conditions of employment of employees in the Dietary Unit, including: (1) decrease employees' wages; (2) decreased employees' hours; (3) eliminated health insurance benefits; and (4) eliminate paid holidays.

The complaint further alleges that Respondent CBM also as a successor, made unilateral changes regarding the housekeeping staff on September 13. The complaint also alleges that Respondent Budget, as a successor, made unilateral changes to the nursing staff in September 2012 and to the housekeeping and maintenance staff in October 2014 after becoming a successor to CBM. General Counsel argues that the changes to the employees' benefits and other emoluments were mandatory subjects for collective bargaining.

Having determined that Respondents Sprain Brook, Pinnacle, CBM, and Budget violated Section 8(a)(5) and (1) of the Act when they refused to recognize and bargain with the exclusive collective-bargaining representative of its employees, I now find that Respondents Pinnacle, CBM, and Budget made unilateral changes in the terms and conditions of employment of unit employees at the Sprain Brook facility without notifying and bargaining with the Union in violation of Section 8(a)(5) and (1) of the Act. *Provena St. Joseph*, supra; *Champion Parts Rebuilders*, 260 NLRB 731, 733–734 (1982).

Respondents Sprain Brook and Pinnacle, as joint employers, were under a legal obligation to provide notice to 1199 SEIU of the planned changes in the terms and conditions of employment of the dietary aides and cooks and an opportunity to bargain over these changes. Respondent Sprain Brook and Budget, as joint employers, were legally obligated to provide notice to 1199 SEIU and bargain over the nursing staff unit employees. CBM as a successor to Confidence of the housekeeping staff, was also legally required to provide notice and bargain over the terms and conditions of employment that were changed under the housekeeping contract with Respondent Sprain Brook.

The 1199 SEIU representative, Speller, sent letters to bargain and request information to Respondents Budget and Pinnacle. His letter to Respondent Pinnacle stated the Union's opposition to the changes in the dietary unit and a request to bargaining over the changes. Speller never received a response from Sprain Brook or Pinnacle on his request to bargain over

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[62] Although Speller had written a letter to Budget to bargain over the changes to the terms and conditions of employment with the nursing staff, there is no indication that 1199 SEIU had made a request to bargain over Budget's assumption the housekeeping functions in October 2014. Assuming that 1199 SEIU had an obligation to request bargaining with Respondent Budget in or around October 2014 as the successor to CBM when the housekeeping functions were contracted to Budget, it did not waive its rights because the Union was faced with a fait accompli. In this situation, the Union was never informed of this decision until after it was made, and communicated to the housekeeping staff. The record thus establishes that by the time 1199 SEIU learned of Sprain Brook's decision to terminate the CBM contract, it was a final decision about which Sprain Brook and Budget, as joint employers, had no intent to bargain. *Pontiac Osteopathic Hospital,* 336 NLRB 1021, 1023–1024 (2001).

the changes. His letter to Budget referenced the nursing staff and the Union's opposition to the changes in the terms and conditions of employment with the nursing functions. Speller testified he received no responses from any of the Respondents except for Confidence. Speller also sent a similar letter to CBM on July 18, 2013, when CBM assumed successorship of the housekeeping functions.

Ample credible testimony from the General Counsel's witnesses showed that unilateral changes were made after the employees were rehired. The dietary aides and cooks that were rehired by Respondent Pinnacle retained their positions but had to accept changes in their wages, benefits and working conditions. Those accepting the employment offer were rehired performing the same duties. Vernon Warren was rehired to the same position and but received less money and his work schedule changed from6 days to working only 5 days. Warren also said that his breaktime was changed and was no longer paid for his 30 minute break.

Alvin Nicholson was also rehired as a dietary aide at a lower wage rate. Nicholson's new wage rate was $10 dollars an hour. Nicholson said he was receiving $11.75 before he was rehired by Pinnacle. Nicholson agreed to perform cooking functions soon after he was rehired but never received the higher wage rate of $14 per hour that was promised to him in his new position. Carmen Smith was employed as a dietary aide at $14.75 per hour. Smith was rehired as a dietary aide and her salary was reduced to $10 dollars per hour.

With regard to the housekeeping and cleaning staff, Clarisse Nogueira stated that her hourly wages went down from $16 to $12 dollars and she lost her uniform allowances when Respondent Sprain Brook contracted the housekeeping functions to Confidence. Nogueira said that she also lost her paid vacation and sick leave days. She stated that there were no health benefits unless she signed up with another union local.

The foregoing changes affected employee terms and conditions of employment and were, thus, mandatory subjects of bargaining. See *Mid-Continent Concrete*, 336 NLRB 258 (2001), enfd. 308 F.3d 859 (8th Cir. 2002) (health insurance); *Desert Toyota*, 346 NLRB 132 (2005), citing *Abernathy Excavating, Inc.*, 313 NLRB 68 (1993) (regularly scheduled pay dates); *Migali Industries*, 285 NLRB 820, 825–826 (1987) (vacation scheduling); *E. I. du Pont & Co*., 346 NLRB 553, 579 (2006) (severance pay).[63]

I find that Respondents Sprain Brook, Pinnacle, and Budget, jointly and severally, violated Section 8(5) and (1) of the Act when unilateral changes were made without first providing notice and an opportunity to bargain with 1199 SEIU over changes in the terms and conditions of employment of the dietary and cook staff.

I find that Respondents Sprain Brook and Budget violated Section 8(5) and (1) of the Act as joint employers made unilateral changes without first providing notice and an opportunity to bargain with 1199 SEIU over the in the terms and conditions of employment of the nursing and housekeeping and maintenance staff. [64]

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[63] There were nominal unilateral changes regarding the nursing staff. Shelly Ann Williams received an offer of employment as a CNA from Respondent Budget. Williams' employment continued without interruption and at her current wage rate. Williams testified that her work duties and hours did not change under the new ownership. Paula Robinson, also a CNA, testified her hours and work duties did not change when she was rehired by Budget. However, as noted above, Respondents Sprain Brook and Budget were nevertheless legally obligated to recognize and bargain with 1199 SEIU.

[64] Having analyzed in the alternative that Respondent Budget was also a successor, I would also find that Budget has a legal obligation to bargain with the Union on the material and

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Finally, I find that CBM, as a successor employer as of July 18, 2013, violated Section 8(5) and (1) of the Act when it made unilateral changes without first providing notice and an opportunity to bargain with 1199 SEIU over the in the terms and conditions of employment of the housekeeping and maintenance staff.

VII. The Respondent Sprain Brook Violated Section 8(a)(5) and (1) With Regard to the Union Access Policy

Paragraph 9 (a)(1) of the second amended complaint (GC Exh. 2) states that

> In or around June 2012, and continuing thereafter, Respondent Sprain Brook Rehab denied representatives of the Charging Party Union access to its facilities for purposes of meeting with Respondents' management and/or employees.

The General Counsel argues that access to the facility was a policy change and a mandatory subject for collective bargaining. Inasmuch as having find that Sprain Brook is a successor to the predecessor entity at the latest by June 15, 2012, the question is whether Sprain Brook, as the successor employer, violated Section 8(a)(5) and (1) of the Act when it refuse to bargain collectively with the representative of its employees over the change in the Union's access policy at the Sprain Brook facility.

a. Denial of 1199 SEIU Access to its Facility

It was the practice of 1199 SEIU representative Adrien Trumpler to visit the Sprain Brook facility once or twice per month. Trumpler said he never made an appointment with the facility management before accessing the facility. This practice changed in late June 2012 when he arrived at the Sprain Brook facility to hand out union flyers. Trumpler had finished meeting and speaking with employees in the dining area and was preparing to leave the facility when Stein walked in. Stein told Trumpler that he was not welcome in the facility and demanded that he leave the premises. Stein also told Trumpler to make an appointment with management in the future before he could access the facility.

It is not disputed that Trumpler never previously had to make an appointment before entering the facility on union business. Further, no explanation was provided to him by Stein for the change in access policy. Trumpler attempted to arrange for a meeting with Sprain Brook management over the union's access to the facility in August 2012 but was not able to arrange for a meeting. The record is also devoid of any notice provided by Respondent Sprain Brook to the Union for the change in policy and for the opportunity of the Union to bargain over this change. It is also undisputed that Respondent did not provide the Union with access to the facility after August 2012.

Discussion and Analysis

The Board applies a balancing test to determine whether a union is entitled to access an employer's facility in order to perform its representative functions. In *Holyoke Water Power Co.*, the Board held that when "responsible representation" can only be accomplished through access to the employer's premises, the employer's property rights "must yield to the extent necessary to achieve this end." 273 NLRB 1369, 1370, enfd. 778 F.2d 49 (1st Cir. 1985).

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substantial changes in the terms and conditions of employment of the nursing and housekeeping/maintenance staff.

However, when the union can effectively represent the bargaining union members "through some alternate means other than entering on the employer's premises," the employer's property rights are paramount, and the union may be lawfully denied access. *Holyoke Water Power Co.*, above at 1370; *see also Nestle Purina Petcare Co.*, 347 NLRB 891 (2006); *New Surfside Nursing Home*, 330 NLRB 1146, 1146 fn. 1, 1150 (2000). It is the employer's burden to present evidence establishing that its property rights predominate over the union's right to reasonable access, and to demonstrate there are alternate means of obtaining the information necessary for the union to adequately represent the bargaining unit employees. *Nestle Purina Petcare Co.*, above at 891; *New Surfside Nursing Home*, 330 NLRB at 1150; see also *New Surfside Nursing Home*, 322 NLRB 531, 535 (1996).

Here, the information sought by the Union—direct interaction with the employees and observation of their work areas, working conditions, and work processes—was presumptively relevant to its responsibilities as a collective-bargaining representative. *New Surfside Nursing Home*, 330 NLRB 1146, 1150 (2000). The Board has stated that in the context of collective-bargaining negotiations,

> There can be no adequate substitute for the Union representative's direct observation of the plant equipment and conditions, and employee operations and working conditions, in order to evaluate matters such as job classifications, safety concerns, work rules, relative skills, and other matters necessary to develop an informed and reasonable negotiating strategy. *CCE, Inc.*, 318 NLRB 977, 978 (1995).

As in the present situation, the Board has held that these considerations are particularly acute in the case of bargaining for an initial contract by a newly certified union. *CCE, Inc.*, above at 978, 979; see also *Washington Beef, Inc.*, 328 NLRB 612, 618–619 (1999). As a result, I find that General Counsel has met its burden to establish that the information sought by the Union was presumptively relevant to its representation of the bargaining unit employees and that Sprain Brook failed to meet its burden to establish that its property rights predominate over the Union's right to reasonable access. Accordingly, I find that Respondent Sprain Brook violated Section 8(a)(5) and (1) of the Act by unilaterally changing the Union's access policy without first bargaining with 1199 SEIU over the policy change.

b. Parking Lot Incident

I also find that Respondent Sprain Brook violated Section 8(a)(1) of the Act when Stein called the police to remove the union supporter and representative engaged in protected activity in the parking area. On October 17 2012, Trumpler and Nicholson attempted to distribute union flyers in the parking area of the Sprain Brook facility as a reasonable alternative to convey the union message, after having been denied access inside the facility. They were both met by Stein who threatened them with arrest by the police. The police was called by Stein and Trumpler and Nicholson were instructed by the police to leave the parking area, which they did.

It is the Respondent's burden to establish that it had a property interest to exclude individuals from its property in a situation such as this involving a purported conflict between the exercise of Section 7 rights and private property rights. It is well established that an employer may properly prohibit solicitation by a nonemployee union representative on its property if reasonable efforts by the union through other available channels of communication will enable it to convey its message. *Wild Oats Community Market*, 336 NLRB 179 (2001).

There is no credible evidence that the conduct of the Union representative and employee on that date interfered with ingress to or egress from the facility. The Board noted in *Sprain Brook Manor Nursing Home, LLC*, 351 NLRB 1190, 1191 (2007), that: "It is well established that an employer may seek to have police take action against pickets where the

employer is motivated by some reasonable concern, such as public safety or interference with a legally protected interest." In *Sprain Brook Manor Nursing Home*, however, the Board found there was no evidence that the nonemployee organizers were encroaching on the respondent's property on the days that police were called and thus there was no reasonable concern regarding the protection of its private property interests. In addition, there was no evidence on the days that police were called that the union organizer or employee were blocking traffic or creating safety problems. The Board therefore found that the respondent was not motivated by any reasonable concerns when it called the police and, without any evidence establishing a need for police presence, the Board found the respondent's actions violated Section 8(a)(1). In the instant case, I also find that there is no evidence to establish that the Respondent Sprain Brook was motivated by any reasonable concerns when Stein called the police on October 17.

Accordingly, on the basis of the foregoing, I find that the Respondent violated Section 8(a)(1) of the Act by calling the police to remove the 1199 SEIU representative and employee supporter from the parking lot on October 17 by calling the police while union representative and employee were engaged in Section 7 activity on the parking lot near the Sprain Brook facility.

VIII. The 8(a)(3) Violations

The General Counsel alleges that Respondents Sprain Brook, Pinnacle and Budget violated Section 8(a)(3) of the Act by discharging employees because they engaged in union activity and Sprain Brook violated the Act by subcontracting unit work because employees engaged in union activity (GC Br. at 68–74).

Discussion and Analysis

Section 8(3) of the Act prohibits employer interference, restraint, or coercion of employees for their exercise of the rights guaranteed in Section 7 of the Act. Those rights include "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities of the purpose of collective bargaining or other mutual aid or protection." Section 8(3) prohibits employers from discriminating in regard to an employee's "tenure of employment . . . to encourage or discourage membership in any labor organization." An employer violates Section 8(a)(3) by disciplining employees for antiunion motives. *Equitable Resources*, 307 NLRB 730, 731 (1992). To establish a violation of Section 8(a)(3) and (1) in cases where a discharge is alleged in a joint employer (or successorship) context, the General Counsel has the burden to prove that the discharged employees was motivated by employer antiunion animus.

In assessing Respondent's motive, this case is no different than any other 8(a)(3) case. The Board requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatees' protected conduct was a 'motivating factor' in the employer's decision. Then the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct. *Wright Line, 251* NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB* v. *Transportation Management Corp.,* 462 U.S. 393, 399–403 (1983); *American Gardens Management Co.,* 338 NLRB 644 (2002).

The *Wright Line* test requires the General Counsel to make a prima facie showing sufficient to support an inference that the employee's protected conduct motivated the employer's adverse action. Unlawful motivation is most often established by indirect or circumstantial evidence, such as suspicious timing and pretextual or shifting reasons given for the employer's actions. Discriminatory motivation may reasonably be inferred from a variety of factors, such as the company's expressed hostility towards unionization combined with knowledge of the employees' union activities; inconsistencies between the proffered reason for

discharge or refusal to hire and other actions of the employer; disparate treatment of certain employees with similar work records or offenses; a company's deviation from past practices in implementing the discharge and proximity in time between the employees' union activities and their discharge. *WF. Bolin* Co. *v. NLRB,* 70 F. 3d 863,871 (6th Cir. 1995).

a. The Respondent Sprain Brook Violated Section 8(a)(3) and (1) of the Act by Subcontracting Unit Work

I agree with the General Counsel that Respondent Sprain Brook engaged in antiunion animus by subcontracting unit work to avoid bargaining with the 1199 SEIU and because employees engaged in union activity in violation of Section 8(a)(3) of the Act. The General Counsel has met its prima facie case by showing union activity, employer's knowledge of that activity, and animus. See, e.g., *Approved Electric Corp.*, 356 NLRB 238 (2010). That Respondent Sprain Brook was aware that the predecessor employees were organized is uncontroverted. It also knew which of the job applicants held union positions with 1199 SEIU. That the decision to embark upon subcontracting all the unit employee functions was part of an overall plan motivated by antiunion animus is established by the following direct evidence and circumstantial evidence.

Predecessor Sprain Brook had a long contentious labor history with 1199 SEIU. Since June 2006 when the Union was certified as the exclusive collective-bargaining representative of unit employees, there have been numerous unfair labor practices, particularly in antiunion animus against the Union. Since certification, the parties never reached a first collective-bargaining agreement and the Union continued to bargain with Respondent Sprain Brook through 2011. Stein, the majority owner of Respondent Sprain Brook, was well aware of the ongoing unfair labor practices, including the initial subcontracting of the housekeeping functions and the elimination of the laundry department, resulting in the discharge of Nogueira in 2011 and the findings made against the predecessor by the Board inasmuch as Stein was present at the Sprain Brook facility as early as 2007. Stein's efforts to stave off a first bargaining agreement by delaying the bargaining negotiations until the subcontracts were in place and eventually ignoring the Union's effort to continue bargaining is indicative of his antiunion animus. The decision to subcontract shortly after Respondent Sprain Brook discontinued its bargaining with the Union strongly supports a prima facie that the decision was motivated by antiunion considerations. *Best Plumbing Supply, Inc*., 310 NLRB 143, 144 (1993); *Flat Rate Moving, Ltd*., 357 NLRB 1321, 1328 (2011).

Moreover, Stein's effort to prevent a union shop is evidenced by Respondent Sprain Brook's contract with Pinnacle. The contract plainly states that the "Facility (Sprain Brook) and Pinnacle recognizes the facility as a non-unionized facility (GC Exh. 16) and clearly contrary to the fact that 1199 SEIU has been the exclusive collective-bargaining representative of unit employees at the facility since 2006. Respondent Sprain Brook's animus toward union activity is further established by Stein's unlawful unilateral change in the Union access policy in May/June 2012 and his threats to have Trumpler and Nicholson arrested when they were distributing union flyers on the facility's open parking area in October. *Atelier Condominium & Cooper Square Realty*, 361 NLRB No. 111 (2014) (unlawful interrogations and threats evidenced antiunion animus).

Stein's business model for Respondent Sprain Brook that only cares for the patients and not to deal with nonmanagement personnel is also suspect of antiunion animus and smacks of pretext. Respondent Sprain Brook, as a joint employer with Pinnacle and Budget, was intimately involved with all aspects of the facility personnel. Respondent Sprain Brook continued to supervise the nursing staff with the nursing director and HR assistant, both employed by Sprain Brook. Respondent Sprain Brook directed the discharge of Nogueira by Confidence. Respondent Sprain Brook continued to pay the salaries and benefits of the non-

management unit employees through an elaborate reimbursement scheme with Pinnacle, Budget, and CBM. Sprain Brook dictated the wages, benefits and other employee emoluments to Pinnacle, Budget and CBM and any additional expenses incurred by the contractors were approved by Sprain Brook. Sprain Brook continued to supervise these employees, either directly as in the nursing staff or indirectly by its contractual relationship with the other Respondents.

Inasmuch as the evidence establishes that Respondent Sprain Brook's proffered reasons are pretextual, the Respondent necessarily fails to meet its rebuttal burden. *Remington Lodging & Hospitality, LLC*, 363 NLRB No. 112 (2016). Accordingly, I find that Respondent Sprain Brook violated Section 8(a)(3) and (1) of the Act by subcontracting the dietary aide, nursing and housekeeping unit work.

b. The Respondents Sprain Brook and Pinnacle Violated Section 8(a)(3) and (1) of the Act by discharging Key Union Supporters

The complaint alleges that Alvin Nicholson and Vernon Warren were discharged by Respondents Sprain Brook and Pinnacle acting in concert as joint employers and that Clarisse Nogueira was discharged by Confidence at the direction of Respondent Sprain Brook. The General Counsel argues that Respondents Sprain Brook, Pinnacle, and nonparty Confidence unlawfully discharged key union employees, including Nogueira, Nicholson and Warren because the three employees (and others) supported 1199 SEIU and refused to sign union membership cards with Local 713.

Under *Wright Line*, above, the General Counsel must demonstrate by a preponderance of the evidence that the employee was engaged in protected activity, that the employer had knowledge of that activity, and that the employer's hostility to that activity "contributed to" its decision to take an adverse action against the employee. *Director, Office of Workers' Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 278 (1994); *Sea-Land Service*, 837 F.2d 1387 (5th Cir. 1988).

In the matter before me, I find that the General Counsel has made a prima facie showing that the three employees' union activity was a motivating factor in the Respondents' decisions to discharge them. In *Tracker Marine, LLC,* 337 NLRB 644 (2002), the Board affirmed the administrative law judge who evaluated the question of the employer's motivation under the framework established in *Wright Line.* Under the framework, the judge held that the General Counsel must establish four elements by a preponderance of evidence. First, the General Counsel must show the existence of activity protected by the Act. Second, the General Counsel must prove that the Respondent was aware that the employee had engaged in such activity. Third, the General Counsel must show that the alleged discriminatee suffered an adverse employment action. Fourth, the General Counsel must establish a link, or nexus, between the employees protected activity and the adverse employment action. In effect, proving these four elements creates a presumption that the adverse employment action violated the Act.[65]

1. The Discharge of Warren and Nicholson

In October 2012, Vernon Warren met with his supervisor, along with six dietary aides, and was presented with two cards to complete and sign. Warren said that one card (blue) was

[65] However, more recently the Board has stated that, "Board cases typically do not include [the fourth element] as an independent element." *Wal-Mart Stores, Inc.,* 352 NLRB 815 fn. 5 (2008) (citing *Gelita USA, Inc.,* 352 NLRB 406, 407 fn. 2 (2008)); *SFO Good-Nite Inn, LLC,* 352 NLRB 268, 269 (2008); also see *Praxair Distribution, Inc.,* 357 NLRB No. 91 fn. 2 (2011).

for health insurance benefits with Local 713 (GC Exh. 26b) and the second card (yellow) was a check off authorization card (GC Exh. 26a). Warren and the other dietary aides were instructed to complete the two cards within 24 hours. Warren was asked twice to sign the two cards, but he refused.

On October 25, 2012, Warren arrived at work and met with Samantha Ward.[66] Ward informed him that he was fired from his dietary aide position. Warren recalled Ward saying to him "It sucks but I have to fire you." On the employee disciplinary action form, it was stated that Warren was fired due to unsatisfactory work performance. Warren said that he has never been previously disciplined for his work performance. Ward never explained the unsatisfactory work that resulted in his discharge. The record is void of any documents evidencing of any prior discipline or unsatisfactory work performance issued to Warren.

Alvin Nicholson, as a former cook at the Sprain Brook facility, was required to attend a physical examination on routine basis. Nicholson's medical examination had been provided free of charge by predecessor Sprain Brook. On October 22, 2012, Nicholson was directed to take a medical examination. Nicholson was asked by the HR assistant Estefany Sanchez[67] to complete some forms and then to visit the nurse at the facility. According to Nicholson, Sanchez provided him with two cards to complete. Like Warren, the blue card was for union authorization with Local 713 and the yellow card was for health benefits.

Nicholson refused to sign the two cards and also told Sanchez that his physical examination should be free. Subsequently, on the same day, he received a telephone call from Ward. At the meeting, Nicholson was informed by Ward that his cook position was being eliminated. Nicholson asked for his former dietary aide position, but was informed by Ward that someone else was being trained for that position. Nicholson was then discharged on October 22 by Ward.

I find that the General Counsel has established by a preponderance of the evidence that Warren and Nicholson were discharged due to the antiunion animus of Respondents Sprain Brook and Pinnacle. To rebut the presumption established by the General Counsel, the Respondents bears the burden of showing the same action would have taken place even in the absence of protected conduct. See *Manno Electric, Inc.,* 321 NLRB 278, 280 fn.12 (1996); *Farmer Brothers, Co.,* 303 NLRB 638, 649 (1991). To meet this burden "an employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct." *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984); *Durham School Services, L.P.*, 360 NLRB No. 85 (April 25, 2014).

Discriminatory motive may be established in several ways including through statements of animus directed to the employee or about the employee's protected activities, *Austal USA, LLC*, 356 NLRB No. 65, slip op. at p. 1 (2010); the timing between discovery of the employee's protected activities and the discipline, *Traction Wholesale Center Co. v. NLRB*, 216 F.3d 92, 99 (D.C. Cir. 2000); evidence that the employer's asserted reason for the employee's discipline was pretextual, such as disparate treatment of the employee, shifting explanations provided for the adverse action, failure to investigate whether the employee engaged in the alleged misconduct, or providing a nondiscriminatory explanation that defies logic or is clearly baseless, *Lucky Cab Co.*, 360 NLRB No. 43 (2014); *ManorCare Health Services—Easton,* 356 NLRB No. 39, slip op. at 3 (2010); *Greco & Haines, Inc.,* 306 NLRB 634, 634 (1992); *Wright Line*, 251

[66] As noted, Ward was the director of the dietary aides and cooks and employed by Pinnacle.

[67] As noted, Sanchez is an employee of Sprain Brook.

NLRB at 1088 fn.12, *citing Shattuck Denn Mining Co. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Cincinnati Truck Center*, 315 NLRB 554, 556–557 (1994), enfd. sub nom*. NLRB v. Transmart, Inc.*, 117 F.3d 1421 (6th Cir. 1997)).

Turning to the Respondent's defense, the Respondent contends that Warren was discharged due to his unsatisfactory job performance and Nicholson was discharged because his cook position was eliminated.

I find that the nondiscriminatory reason for the discharge of Warren and Nicholson as clearly baseless.

With regard to Warren, the Respondents did not provide credible evidence to document the incident that caused his discharge or that Warren had a work history of unsatisfactory performance. Respondents Sprain Brook and Pinnacle did not provide any personnel records evidencing that Warren had been disciplined in the past nor identified the incident that was so serious that resulted in his immediate discharge. The Board has held that an employer's failure to conduct a fair and full investigation into the incident causing the employee's discharge and to give the employee the opportunity to explain his action before imposing discipline is a significant factor in finding discriminatory motivation. *Publishers Printing Co.*, 317 NLRB 933, 938 (1995), enfd. 106 F.3d 41 (6th Cir. 1996).

With regard to Nicholson, the Respondents never articulated the rationale for the elimination of his cook position. The record is void of any evidence indicating that there were layoffs of cooks at the facility or that there was a budget short-fall for the elimination of the cook position. Moreover, the Respondents failed to provide any credible reason as to why Nicholson could not return to his former dietary aide position. The alleged reason provided to Nicholson was because another person was being trained in the same position. However, the Respondent provided no evidence to support this rationale.

On the other hand, Respondents Sprain Brook and Pinnacle were anxious to rid themselves of Warren and Nicholson. Warren has been an 1199 SEIU delegate since his employment with predecessor Sprain Brook. Warren objected to signing the Local 713 union card and voiced his opposition to the presence of Local 713 to Ward. Nicholson supported 1199 SEIU and his support was known to Stein. Nicholson was involved in distributing 1199 SEIU flyers in early October when Stein threatened to have him (and Trumpler) arrested. When Warren and Nicholson refused to sign Local 713 union cards, they were discharged.

I find that the timing of the discharges, shortly after they voiced their support for 1199 SEIU and refused to sign union cards for a different union supports an inference that the Respondents' discipline was motivated by their support for 1199 SEIU. *State Plaza Hotel*, 347 NLRB 755, 755–756 (2006); *Toll Mfg. Co*., 341 NLRB 832, 833 (2004); Davey Roofing, Inc., 341 NLRB 222, 223 (2004) (temporal proximity between union activity and employer's adverse action is evidence of unlawful motivation).

Nicholson and Warren were discharged less than 48 hours after they made their support of the 1199 SEIU clear to Sprain Brook and Pinnacle supervisors. This timing represents significant evidence of unlawful motivation. Such coincidence in time between Respondents' knowledge of the employees' union activity, and their discharge is strong evidence of an unlawful motive for his discharge. *Trader Horn of New Jersey,* 316 NLRB 194, 198 (1995). As stated by the administrative law judge in *AdvoServ of N.J*., 363 NLRB No. 143 slip op. at 31 (2016), "Indeed, "timing alone may be sufficient to establish that union animus was a motivating factor in a discharge decision." *Sawyer of NAPA,* 300 NLRB 131, 150 (1990); *NLRB v. Rain-Ware,* 732 F.2d 1349, 1354 (7th Cir. 1084), *NLRB v. Windsor Industries,* 730 F.2d 860, 864 (2d Cir. 1984); *Manor Care Health Services—Easton,* 356 NLRB 202, 204, 226 (2010) (Proximity in

time between discriminatee's union activity and discharge supports finding of unlawful motivation for the termination); *LaGloria Oil & Gas,* 337 NLRB 1120, 1123, 1132 (2002). (Discharge shortly after Employer learned of employee's union activities, strongly supports a finding that discharge motivated by union animus")."

The Respondents have demonstrated antiunion animus in violation of Section 8 (a)(3) and (1). I find that the discharge of Warren and Nicholson was motivated by their union support and activity for 1199 SEIU, and that the Respondents have not met their burden of persuasion to demonstrate the same action would have taken place even in the absence of the protected conduct. *Wright Line*, above, at 1089.

2. The Discharge of Nogueira

Nogueira has been a union delegate for 1199 SEIU for several years before she, and the housekeeping staff, met with Jose Perez, the regional manager with Confidence on September 25, 2012. Nogueira was introduced to Ken Franz, a business agent, from Local 312. Nogueira informed Franz that she is a member of 1199 SEIU. According to Nogueira, Franz left the Local 312 authorization form to sign and his business agent card. Nogueira did not complete the union card. Nogueira was also aware of Local 713's drive to recruit employees in October 2012. Nogueira was given Local 713 health and welfare fund enrollment cards and Local 713 application and check off authorization form by Sanchez to complete.

As a union delegate, Nogueira was disturbed that employees were being intimidated to sign with another local. Nogueira advocated on behalf of CNA Galina not to sign the Local 713 union card and told her that 1199 SEIU was the rightful union. Nogueira said this conversation occurred on October 23 in an elevator in the presence of Sanchez who held a stack of Local 713 union cards.

On the next day, Nogueira had a conversation with Jose Perez regarding her conversation with Galina. Nogueira told Perez that she is a delegate with Local 1199 and had the right to tell Galina about her union rights. On the following day, Perez told Nogueira that Stein and Strulovitch believe that she was harassing the staff and not fulfilling her duties. Nogueira replied that management was harassing the staff and she was simply voicing her opposition to the signing of Local 713 union and benefit cards. Nogueira testified that at this point she was informed by Perez that Stein and Strulovitch said she was fired. No apparent reason was provided for her discharge and no documentation of her termination was completed by Respondent Sprain Brook or Confidence.

Perez testified that Stein spoke to him about Nogueira. According to Perez, Stein said that Nogueira was harassing the staff and she was not meeting the standard of the housekeeping department. Perez said that Stein told him, "Jose, you have to terminate her. You have to fire her." Perez responded that he needed to investigate these allegations and get back to Stein. Perez found that no employee had any issues with Nogueira. Perez also spoke to Nogueira's immediate supervisor, Brian John, and was informed that Nogueria was not interfering with any employees. Perez said he was instructed to discharge Nogueria by Stein. Perez contacted his supervisor, Patrick Egan, and was told that there were disciplinary protocols that Confidence follows in discharging an employee. Perez told Nogueria she was harassing the staff and her duties were not being fulfilled. Perez admitted that this was not true based upon his own investigation but was directed to discharge Nogueria. Perez believed that Nogueria was discharged in October.

In assessing the Respondent's defense, I note that the Board has held "[a]n employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the

protected activity." *W. F. Bolin Co*, above, 1118, 1119 (1993). In order to meet the Wright Line burden of persuasion, an employer must establish that it is consistently and evenly applied its disciplinary rules. *DHL Express, Inc*., 360 NLRB No. 87, slip op. at 7 (2014). In *Septix Waste, Inc.,* 346 NLRB 494 (2006), the Board held that in order to establish a valid Wright Line defense, an employer must establish that it is applied its disciplinary rules regarding the conduct at issue consistently and evenly.

Respondent Sprain Brook argued that Nogueria was discharged because she was harassing other employees (R SB Br. at 28). I find that Nogueira's discharge was a pretext and I find it appropriate to reasonably inferred that the real motive was due to Nogueira's union activity. Nogueria has never been subjected to discipline during her employment years with predecessor Sprain Brook. In the instant case, Respondent Sprain Brook produced no evidence of employees who allegedly had harassed other employees and were immediately discharged. Perez credibly testified that Confidence had "protocols" or procedures for disciplining employees, which were not followed because Sprain Brook insisted to a Confidence principal, Patrick Egan, that Nogueria must be fired. Perez also credibly testified that he was directed by Stein to discharge Nogueira without following proper protocols. Respondent Sprain Brook proffered no credible evidence that it had a policy to discharge an employee found interfering or harassing other employees. Nothing was proffered by Respondent Sprain Brook of any comparative evidence of other employees that were discharged for intimidating or interfering with coworkers.

On the other hand, Nogueria was known in the past by Stein as an advocate of other employees at the facility. Nogueira had met and spoken to Stein and Moses Strulovitch in November 2010 regarding the discipline of another employee. Nogueira also had another occasion to speak to Stein during this same time frame over Stein's criticism of another housekeeper's ability to clean the windows. According to Nogueira, Stein responded "You don't tell me what to do. I'm your boss." Stein was also aware and had knowledge of Nogueira's union activity since 2009 since both individuals attended the bargaining sessions between 1199 SEIU and Respondent Sprain Brook.[68]

Accordingly, Respondent Sprain Brook violated Section 8(a)(3) and (1) of the Act when it directed Confidence, as agent, to discharge Nogueria because of her union activity and support for 1199 SEIU and failed to demonstrate that Nogueira would have been discharged absence her protected activity.

IX. The 8(a)(2) Violations of the Act

The General Counsel maintains that Respondents Sprain Brook, Pinnacle and Budget unlawfully aided and abetted Respondent Local 713 by (1) soliciting, threatening, and coercing employees to support Local 713; (2) recognizing Local 713 as the exclusive collective-bargaining representative for employees working at Sprain Brook; (3) entering into a collective-bargaining agreement with Local 713 at a time that Local 713 did not have an uncoerced majority of employees because each employer was obligated to recognized 1199 SEIU as the exclusive collective-bargaining representative of the employees; and (4) deducting and remitting dues to Local 713.

Discussion and Analysis

[68] *Respond First Aid*, 299 NLRB 167, 169 fn. 13 (1990), enfd. mem. 940 F.2d 661 (6th Cir. 1991)("The Board and the courts have long held that when the General Counsel provides an employer suspects discriminatees of union activities, the knowledge requirement is satisfied").

Section 8(a)(2) of the Act prohibits an employer to dominate or interfere with the formation or administration of a labor organization or contribute financial or other support to it. The complaint alleges that Respondents Sprain Brook, Pinnacle, and Budget violated Section 8(a)(2) of the Act when they extended recognition to Respondent Local 713, International Brotherhood of Trade Unions when they owe a bargaining obligation to 1199 SEIU. The General Counsel argues that in the process of extending recognition to Local 713, the Respondents violated Section 8(a)(2) of the Act by interfering with the employees' right to bargain collectively through representatives of their own choosing with 1199 SEIU by directly requesting employees to sign Local 713 union cards and threatening employees with discharge for their refusal to sign with the Respondent Union.

An employer violates Section 8(a)(2) when it recognizes a minority union as the exclusive bargaining representative, and that a union violates Section 8(b)(1)(A) when it accepts such recognition. Although the law permits certain forms of cooperation between employers and unrecognized unions, ". . . an employer crosses the line between cooperation and support, and violates Section 8(a)(2), when it recognizes a minority union as the exclusive bargaining representative." *Dana Corp. and International Union*, 356 NLRB No. 49, 260 (2010); also, *Ladies Garment Workers v. NLRB (Bernhard-Altmann)*, 366 U.S. 731 (1961).

The record shows that on January 15, 2008, Budget Services entered into a collective-bargaining agreement with Local 619 IUJAT signed by the president of Local 619 and Weber for Budget. The CBA between Local 619 and Budget covered a unit of "aides who are dispatched from Renaissance" (GC Exh. 52).[69] Weber testified that he negotiated the contract but could not remember the details. Weber recalled that the CBA would only cover a specific group of Budget employees working at the Renaissance nursing facility (Tr. 1320–1323).

During the April 2009 time frame, Local 619 merged with Local 713 and Local 713 became a successor to Local 619. In an undated assumption of agreement and merger, the two unions agreed that Local 713 will adopt the current collective-bargaining agreement of Local 619 and to assume all the rights, duties, and obligations of the agreement. Weber, as president of Budget Services Inc., signed and agreed to recognize Local 713 as the collective-bargaining representative of the unit employees "employed by Budget Services, Inc." (GC Exh. 53).

On September 10, 2012, Weber on behalf of Budget Services and the president of Local 713 entered into a memorandum of agreement to continue the collective-bargaining agreement on "day to day basis" after the expiration date of the CBA on January 4, 2011. The agreement was for a period from January 15, 2012, to January 14, 2015. Curiously, the memorandum of agreement expanded the Budget employees from "aides who are dispatched from Renaissance" to now include full-time and regular part-time LPNs, CNAs, activity aides, home health aides, personal care aides, and dietary employees and other related jobs regularly scheduled to work 20 or more hours per week at this location and any other location in the New York Metropolitan area" (GC Exh. 54).

Weber testified that it was his signature on the memorandum of agreement but did not recall the discussions surrounding the agreement. Weber also could not recall seeing any signed authorization cards or whether there was an election to include the other categories of employees. Weber could not recall how the memorandum of agreement now included LPNs, CNAs, activity aides, home health aides, personal care aides, and dietary employees (Tr.1329–1335).

[69] As noted, Renaissance was and is a healthcare facility and a client of Budget Services at the time.

On November 1, 2012, Budget Services and Local 713 entered into a recognition agreement for unit employees working for Respondent Sprain Brook in the dietary unit. The recognition agreement stated that Local 713 had demanded that the employer recognize it as the collective bargaining representative of the dietary unit; that at the request of the employer, the union has produced authorization cards; that the employer had compared the signatures on the authorization cards' the employer has verified that the authorization cards are genuine signatures from a majority of the employees employed in the dietary unit. The recognition agreement further stated that Budget Services recognizes and acknowledges Local 713 as the sole and exclusive collective-bargaining representatives for all its full-time and regular dietary employees, excluding temporary and seasonal employees, clerical, managerial and professional employees, guards and supervisors. The parties agreed to execute a collective-bargaining agreement "as soon as thereafter practicable" (GC Exh. 55).

Weber could not recall signing the recognition agreement and had no recollection as to the circumstances in signing this agreement. Weber stated that he did not recall Local 713 making a demand to represent the dietary employees and failed to remember requesting or seeing any authorization cards. Weber could not recall if a subsequent CBA was signed (Tr. 1338–1341). No evidence has been produced to show that a collective-bargaining agreement was entered into by Budget Services and Local 713 to cover the dietary employees at Sprain Brook Rehab.

Pinnacle, who had the contract for the dietary department, was not a party to the recognition agreement and had never entered into a collective-bargaining agreement with a union. Pinnacle denied that it had a collective-bargaining relationship with Local 713. However, Pinnacle worked in tandem with Budget and Sprain Brook to sign up the dietary aides with Local 713. At a meeting with their supervisors in early October 2012, Warren and the six dietary aides were told by a Pinnacle supervisor that he had two cards for the dietary aides to complete and sign. Warren said that one card (blue) was for health insurance benefits with Local 713 (GC Exh. 26b) and the second card (yellow) was a check off authorization card (GC Exh. 26a). Warren and the other dietary aides were instructed to complete the two cards within 24 hours. Warren did not sign the two cards (Tr. 461–466).

Warren was also approached by an individual by the name of Foruq Rahim believed to be a representative from Respondent Budget at work and request that Warren sign the same two cards. Warren again refused to sign up with Local 713. Warren was subsequently discharged by Ward, the Pinnacle director of dietary, on October 25, 2012.

Warren was subsequently hired by Respondent Budget. He was approached by a representative from Local 713 to sign the aforementioned two Local 713 union and health benefits cards before he could receive health benefits. Warren again refused. Warren said there was a third occasion in January/February 2014 when he was approached by another Local 713 representative and was told that he needed to sign the union card before he could receive any health benefits. Warren again refused to sign (Tr. 486–495).

I credit Warren's testimony that he was first coerced by a Pinnacle representative to complete a union card for Local 713 and was approached a second time after he was rehired by a Budget and a Local 713 representative to sign up with Local 713. None of the Respondents Pinnacle, Budget or Local 713 presented any credible witnesses to refute Warren's testimony and certainly his testimony was consistent with testimony provided by Nicholson and others. I find that Weber's testimony was confusing and inconsistent. As the owner of Budget and other affiliated companies, Weber first insisted he had no employees working at the Sprain Brook facility. He then insisted he had employees but they were hired by Respondent Sprain Brook. Weber then could not remember negotiating and signing a collective-bargaining agreement with either Local 619 or an assumption of agreement with Local 713. Nevertheless, Respondents

Budget and Pinnacle attempted to coerce unit employees of 1199 SEIU to sign union cards with Local 713 knowing that Local 713 did not represent these employees.

I also credit Nicholson's testimony when he described how he was approached by Sanchez; the HR assistant employed by Respondent Sprain Brook, and was provided with two cards and instructed to complete them. Like Warren, Nicholson was given a yellow card for Local 713 authorization for union dues and a blue card for health benefits (GC Exhs. 26a and 26b). Nicholson refused to sign the two cards. Nicholson was also informed that his health benefits, including a free medical examination, were dependent upon him signing the two cards. Nicholson refused and was subsequently discharged.

Similarly, Katrina Gjelaj, a member of 1199 SEIU, was also instructed by Sanchez to complete her job application for a housekeeping position with Respondent Budget and was also given "union card" authorization card by Sanchez to complete for Local 713. I credit Gjelaj's unrebutted testimony that the Sprain Brook administrator, Shlomo Mushell, instructed the housekeeper to complete the Local 713 union authorization cards. Gjelaj needed her health insurance and was told she would receive health benefits with Local 713. She refused to sign with Local 713. Gjelaj testified that she is now receiving her health insurance from another entity and not with Local 713. Gjelaj insisted that union dues were nevertheless taken out of her paycheck even though she never signed up with Local 713. The record reflects that union dues to Local 713 were deducted from Gjelaj's paycheck for the pay period ending on October 24, 2014 (GC Exh. 105).

Respondent Budget never had a collective-bargaining agreement with Local 713 regarding the former Sprain Brook employees who were rehired by Budget. At best, Respondent Budget entered into a collective-bargaining agreement with Local 713 after the merger with Local 619 pertaining to workers at a the Renaissance healthcare facility.

Respondents Sprain Brook and Pinnacle never had a collective-bargaining agreement with Local 713 but nevertheless both employers sought to bring the dietary aides, cooks and housekeepers under the bargaining agreement between Budget and Local 713. In doing so, Respondents Sprain Brook, Pinnacle, and Budget as joint employers violated Section 8(a)(2) by recognizing Local 713 and interfering with 1199 SEIU as the exclusive bargaining representative of the unit employees. Moreover, said Respondents, as joint employers, violated Section 8(a)(2) of the Act when they threatened and then discharged Nicholson and Warren for their refusal to sign up with the Respondent Union. *Myers Transport of New York, Inc.*, 338 NLRB No. 144 (2003).

The clear evidence shown above is without dispute that Respondents Sprain Brook, Pinnacle, and Budget, as joint employers, maintained and enforced a collective-bargaining agreement with Respondent Union to the detriment of the 1199 SEIU unit employees when the employers were aware that Local 713 did not represent an uncoerced majority of employees in the unit.

The overwhelming corroborating testimony clearly implicates Sprain Brook, Pinnacle, and Budget as working jointly and severally to entice and encourage unit employees to sign with Local 713. By such actions, I find that Respondents Sprain Brook, Pinnacle, and Budget jointly and severally violated Section 8(a)(2) by granting assistance and recognition to Local 713 as the exclusive collective-bargaining representative of the unit employees, and by applying the Budget-Local 713 agreement, including its union-security provisions, to the unit employees at a time when Local 713 did not represent an unassisted and uncoerced majority of the employees in the units.

X. The 8(b)(1)(A) Violations of the Act

Finally, the General Counsel argues that Respondent Local 713 IBOTU violated the Act by accepting such unlawful assistance, recognition, and contracting with each employer.

Discussion and Analysis

Section 8(b)(1)(A) of the Act makes it unlawful for a labor organization to restrain or coerce employees in exercise of their rights under Section 7 (to join or assist a labor organization or to refrain). The General Counsel alleges that Respondent Local 713 violated 8(b)(1)(A) when it accepted recognition from Respondents Sprain Brook, Pinnacle, and Budget as the representative of the predecessor Sprain Brook's former employees as part of Local 713 unit of employees and applied the terms and conditions of the Budget-Local 713 collective-bargaining agreement, including the contract's union-security clause, to the former unit employees, all at a time when Local 713 did not represent an uncoerced majority of those former employees. It is further alleged that Local 713 solicited and encouraged employees to sign authorization cards with Local 713 and enticed these employees with much needed health insurance benefits and other employee emoluments knowing that such employees were already members of 1199 SEIU. The complaint alleges that this conduct violates Section 8(b)(1)(A) of the Act.

I find that Respondent Union violated Section 8(b)(1)(A) of the Act when it accepted recognition from the employer knowing it did not have a majority support of the unit employees. I credit the testimony of Carmen Smith, who was also approached by Pinnacle's supervisor, Ward, and encouraged to join Local 713. Smith also met with Kevin Watts from Local 713 and was asked to sign a Local 713 check off (yellow) authorization card and a health insurance (blue) card (GC Exh. 29). Smith said she was coerced to sign the two cards because she needed her job and health insurance (for her illness) and no longer had health benefits unless she signed with Local 713 (Tr. 365–370). Smith in fact, joined Local 713 and had her union dues deducted from the paystub by Respondent Budget Services, Inc.

Shelly Williams' testimony was also fully credible and corroborates the testimony of others on this point. Williams was coerced to sign a Local 713 membership card. Williams was called to the recreational center along with other employees a few days after she had completed her job application. Williams stated that there was a Budget representative and a person from Local 713, who she identified as Kevin Watts. Williams completed the Local 713 union cards. Paula Robinson similarly testified that she was given two sets of documents sealed in envelopes. Robinson refused to sign the union card with Local 713 but noticed in her paycheck that union dues were deducted anyway from her salary. She subsequently complained to Watts in January 2013, but she continued to have Local 713 union dues deducted from her paycheck.

The Respondent Union's answer is a general denial that it violated Section 8(b)(1)(A) of the Act. The Respondent Union did not provide Kevin Watts or another union representative to explain the solicitation of new members by the Respondent Union. On the other hand, unit employees affiliated with 1199 SEIU clearly informed the Respondent Union of their opposition to sign Local 713 union and benefits cards. Based upon the corroborated testimony provided by Smith, Williams, Gjelaj, Nicholson, and Warren, it is without dispute that Respondent Union had constructively knowledge, if not actual knowledge, that Respondents Sprain Brook, Pinnacle, and Budget were coercing 1199 SEIU unit employees to sign up with Respondent Union on an implied threat of discharge. Kevin Watts, identified as a representative of Local 713 was made aware by Williams and Smith that they were being coerced to sign Local 713 union cards in order to obtain benefits, such as health insurance. Moreover, as credibly described by Robinson and Gjelaj, Respondent Union was aware of their refusal to accept Local 713 but Local 713 union dues were deducted nevertheless in complicity with Respondents Budget,

Pinnacle, and Sprain Brook.

Section 8(b)(1)(A) of the Act makes it an unfair labor practice to restrain or coerce employees in the exercise of their rights. The collection of union dues from employees who are not members of the Respondent Union and making clear to the Respondent Union's representative that the employees are still members of 1199 SEIU and being coerced to sign upon threat of discharge constituted such restraint and coercion. *Service Employees Local 121RN (Pomona Valley Hospital Medical Center)*, 355 NLRB No. 40 (2010).

Accordantly, I also find and conclude that Local 713 violated Section 8(b)(2)(A) and (1) of the Act by accepting such recognition and applying the Budget-Local 713 agreement, including its union-security provisions, to the unit employees at a time when it had not demonstrated that it had exclusive majority representative status.

Conclusions of Law

The Respondents Sprain Brook Manor Rehab, LLC, Pinnacle Dietary, Inc., Budget Service, Inc., Commercial Building Maintenance and Confidence are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union, 1199 SEIU United Healthcare Workers East, and Local 713, International Brotherhood of Trade Unions are labor organizations within the meaning of Section 2(5) of the Act.

The Union 1199 SEIU is, and at all material times, has been the exclusive joint bargaining representative for the following appropriate unit:

The Respondent Sprain Brook as a *Burns successor* violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union as the exclusive collective-bargaining representative of the unit employees and thereafter continuously failing and refusing to bargain on request with 1199 SEIU as the exclusive collective-bargaining representative of the unit employees concerning wages, hours, and other terms and conditions of employment.

The Respondent Sprain Brook violated Section (a)(5) and (1) of the Act when it subcontracted the work of the unit employees to Pinnacle, Budget, CBM, and nonparty Confidence without first notifying 1199 SEIU and giving it a meaningful opportunity to bargain with regard to the decision to subcontract unit work.

The Respondent Sprain Brook violated Section 8(a)(5) and (1) of the Act by notifying the dietary aide and cook unit employees that they would be discharged and employees interested in continuing to perform unit work could do so only if they were hired as employees of Respondent Pinnacle without first notifying 1199 SEIU and giving it a meaningful opportunity to bargain regarding the decision to subcontract unit work.

The Respondent Sprain Brook violated Section 8(a)(5) and (1) of the Act by notifying the nursing unit employees that they would be discharged and employees interested in continuing to perform unit work could do so only if they were hired as employees of Respondent Budget without first notifying 1199 SEIU and giving it a meaningful opportunity to bargain regarding the decision to subcontract unit work.

The Respondent Sprain Brook violated Section 8(a)(5) and (1) of the Act by notifying the housekeeping and maintenance unit employees that they would be discharged and employees interested in continuing to perform unit work could do so only if they were hired as employees of

nonparty Confidence without first notifying 1199 SEIU and giving it a meaningful opportunity to bargain regarding the decision to subcontract unit work.

The Respondent Sprain Brook violated Section 8(a)(5) and (1) of the Act by unilaterally changing the facility access policy and denying 1199 SEIU representatives access to the Sprain Brook facility without providing notice to and an opportunity to bargain over the change.

The Respondent Sprain Brook violated Section 8(a)(1) of the Act by directing an 1199 SEIU representative and an employee supporter to remove themselves from the parking lot at the Scarsdale, New York facility.

The Respondent Sprain Brook violated Section 8(a)(1) of the Act by calling the police to prevent an 1199 SEIU union representative and employee supporter from distributing union handbills and removing the representative from the parking lot without having a reasonable basis to do so.

The Respondents Sprain Brook, Pinnacle, and Budget jointly and severally violated Section 8(a)(5) and (1) of the Act by altering the dietary aide and cook unit employees' terms and conditions of employment without first notifying 1199 SEIU and bargaining to agreement or impasse regarding such changes in the wages, hours, and working conditions of the unit employees.

The Respondents Sprain Brook and Budget jointly and severally violated Section 8(a)(5) and (1) of the Act by bypassing 1199 SEIU and directly offering the nursing unit employees continued employment with initial terms and conditions of employment, including their wages and fringe-benefit provisions.

The Respondent Budget as of October 1, 2014, jointly with Respondent Sprain Brook, violated Section 8(a)(5) and (1) of the Act by bypassing 1199 SEIU and setting terms and conditions of employment for the housekeeping and maintenance unit employees, including their wages and fringe-benefit provisions, on the basis of an unlawful collective-bargaining agreement with Local 713.

The Respondents Sprain Brook, Pinnacle, and Budget violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from 1199 SEIU, extending recognition to Local 713, and applying the Budget collective-bargaining agreement with Local 713 to the unit employees.

The Respondent CBM violated Section 8(a)(5) and (1) of the Act by failing to recognize and bargain with 1199 SEIU as the exclusive collective-bargaining representative of the housekeeping and maintenance unit employees.

The Respondent CBM as a *Burns successor* to Confidence violated Section 8(a)(5) and (1) of the Act as of September 13, 2012, by altering the housekeeping and maintenance unit employees' terms and conditions of employment without first notifying 1199 SEIU and bargaining to agreement or impasse regarding such changes in the wages, hours, and working conditions.

The Respondent Budget as a *Burns successor* violated Section 8(a)(5) and (1) of the Act as of September 13, 2012, without first notifying 1199 SEIU and bargaining to agreement or impasse regarding such changes in the wages, hours, and working conditions of the nursing staff unit employees.

The Respondent Budget as a *Burns successor* to CBM violated Section 8(a)(5) and (1) of the Act as of October 1, 2014, by altering the housekeeping and maintenance unit

employees' terms and conditions of employment without first notifying 1199 SEIU and bargaining to agreement or impasse regarding such changes in the wages, hours, and working conditions of the housekeeping and maintenance unit employees.

The Respondents Sprain Brook and Pinnacle jointly and severally violated Section 8(a)(3) and (1) of the Act when Vernon Warren and Alvin Nicholson were unlawfully discharged because of their protected activities.

The Respondent Sprain Brook violated Section 8(a)(3) and (1) of the Act when it directed nonparty Confidence to discharge of Clarisse Nogueira because of her protected activity.

The Respondents Sprain Brook, Pinnacle, and Budget violated Section 8(a)(2) and (1) of the Act by granting assistance to the Respondent Union and recognizing it as the exclusive collective-bargaining representative of the unit employees, and by applying the terms and conditions of employment of the Budget-Local 713 Agreement, including its union-security provisions, to the unit employees, at a time when the Respondent Union did not represent an unassisted and uncoerced majority of the employees in the unit, and when 1199 SEIU was the exclusive collective-bargaining representative of the unit employees.

The Respondent Local 713 IBOTU violated Section 8(b)(1)(A) and (2) by accepting recognition from the Respondents as the exclusive collective-bargaining representative of the unit employees, and by agreeing to the application of the Budget-Local 713 Agreement, including its union-security provisions, to the unit employees, at a time when it did not represent an uncoerced majority of the employees in the unit when 1199 SEIU was the exclusive collective-bargaining representative of the employees in the unit.

The unfair labor practices set forth above affect commerce within the meaning of the Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents Sprain Brook, Pinnacle, Budget, and CBM and the Respondent Union have engaged in certain unfair labor practices, I shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents Sprain Brook, Pinnacle, and Budget shall be ordered to withdraw recognition from the Respondent Union as the collective-bargaining representative of the unit employees unless and until the Respondent Union has been certified by the Board as their collective-bargaining representative.

In addition, the Respondent Union shall be ordered to cease accepting the Respondents recognition unless and until it is so certified. The Respondents Sprain Brook, Pinnacle, and Budget and Respondent Union will be ordered to cease and desist applying the Local 713-Budget Agreement, including its union-security provisions, and any extension, renewal, or modification thereof, to the unit employees.

The Respondent Sprain Brook also will be ordered to recognize and, on request, bargain with the 1199 SEIU United Healthcare Workers East as the exclusive bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document. As discussed below, I find that an affirmative bargaining order is warranted in this case as a remedy for the Respondent Sprain Brook's unlawful withdrawal of recognition.

The Respondent Sprain Brook shall also be ordered to rescind the unlawful contracts with Pinnacle and Budget and, on the 1199 SEIU's request, any or all of the unilateral changes to the unit employees' terms and conditions of employment made on or after June 15, 2012, and to make the unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. The make-whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

The Respondent Sprain Brook will be required to make whole for any loss of earnings and other benefits suffered as a result of the unilateral changes in the terms and conditions of employment, including wages and healthcare insurance, of the unit employees after they were discharged and rehired by Respondent Pinnacle, Budget and nonparty Confidence. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

The Respondent Sprain Brook will be required to offer reinstatement to Vernon Warren, Alvin Nicholson and Clarisse Nogueira for their discriminatory discharge and to make them whole for any loss of earnings and other benefits suffered as a result of their unlawful discharge. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

The Respondent Sprain Brook additionally will be required to offer reinstatement to all employees discharged on September 12, 2012, whether they were reemployed or not by Respondents Pinnacle, Budget, and nonparty Confidence, and to make them whole for any loss of earnings and other benefits suffered as a result of their unlawful discharge. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. The Respondent Sprain Brook also will be required to expunge from its files and records any and all references to the unlawful discharges and notify the affected employees in writing that this has been done and that the discharges will not be used against them in any way.[70]

The Respondent Sprain Brook additionally shall be ordered to (1) compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum and (2) file a report with the Social Security Administration allocating the backpay to the appropriate calendar quarters, as set forth in *Don Chavas, LLC d/b/a Tortillas Don Chavas,* 361 NLRB No. 10 (2014). Consistent with the Board holding in *AdvoServ of N.J.*, 363 NLRB No.

[70] Having concluded that Sprain Brook illegally made the decision to contract out the housekeeping, nursing, and dietary aides and cooks departments, Sprain Brook is legally responsible as to what happens to those employees thereafter. Thus, to the extent that some of the employees were not rehired by the contractors, those employees would be entitled to reinstatement and backpay from September 12, 2012, to such time as they receive an unconditional offer of reinstatement. As to those former Sprain Brook employees rehired by the contractors, they would also be entitled to reinstatement by Sprain Brook. Their employment with the contractors shall be considered as interim employment for purposes of calculating backpay owed by Sprain Brook. Any Sprain Brook employees who had their employment with the contractors terminated for any reason (other than gross misconduct) would be entitled to backpay starting from the date of their termination to such time as they receive unconditional offers of reinstatement. *Remington Lodging*, above at slip op. at 17.

143 (2016), the Respondent Sprain Brook shall be required within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, to file its report allocating backpay with the Regional Director and not with the Social Security Administration. The Respondent will be required to allocate backpay to the appropriate calendar years only.

Further, the Respondents Sprain Brook, Pinnacle and Budget and the Respondent Union shall ordered as jointly and severally liable for reimbursing all claims of present and former unit employees who were coerced to join the Respondent Union on or since September 13, 2012, for any initiation fees, periodic dues, assessments, or any other monies they may have paid or that may have been withheld from their pay pursuant to the Budget-Local 713 Agreement, together with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

I also shall order the Respondent Sprain Brook and the Respondent Union to post the Board's standard Notice to Employees and Notice to Employees and Members, respectively. In addition, in light of the close factual connection between the unfair labor practices committed by Respondent Sprain Brook and the Respondent Union, I will further order each Respondent to post a signed copy of the other Respondent's Notice, which will be provided by the Region, in the same places and under the same conditions as each posts its own Notice.

The General Counsel requests that I order an affirmative bargaining order requiring Respondent Sprain Brook (or any other appropriate respondent) to bargain upon request within 15 days of a Board Order; bargain on request for a minimum of 15 hours of week until an agreement or lawful impasse is reached or until the parties agree to a respite in bargaining; and to prepare written bargaining progress reports every 15 days to the Regional Director and a copy of the report to the Union with an opportunity to reply (See, GC Br. at 78, 79).

For the reasons set forth in *Caterair International*, 322 NLRB 64 (1996), I find that an affirmative bargaining order is warranted in this case as a remedy for Respondent Sprain Brook's unlawful withdrawal of recognition. The Board has consistently held that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." Id. at 68; *Anderson Lumber*, 360 NLRB No. 67 (2014), quoting *Caterair*.

In *Vincent Industrial Plastics, Inc. v. NLRB*, 209 F.3d 727, 738 (D.C.Cir 2000), the court summarized its requirement that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: '(1) the employees' Section 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act.'" An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining through their designated representative by Respondent Sprain Brook's withdrawal of recognition, its resultant refusal to bargain collectively with 1199 SEIU, and its recognition of Local 713 and by Local 713's acceptance of that recognition. It is particularly appropriate here, where Respondent Sprain Brook not only discharged the unit employees and significantly changed their terms and conditions of employment without notice to or bargaining with 1199 SEIU, but also overrode the unit employees' exercise of their Section 7 rights by their choice to be represented by 1199 SEIU, and further conditioned their continued employment on their acceptance of representation by Local 713. Indeed, herein, Respondent Sprain Brook committed a hallmark unfair labor practice violation when it discharged Nicholson, Warren and Nogueria in violation of Section 8(a)(3) and (1) of the Act. The Board has long held that the discharge of a union supporter is one of the most flagrant forms of interference with Section 7 rights because it tends to reinforce the fear of employees that they will lose their employment if they persist in engaging in union activity. *Michael's Painting, Inc.*, 337 NLRB 860 (2002);

A.P.R.A Fuel Oil, 309 NLRB 480, 481 (1992). An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. It removes Respondent Sprain Brook's incentive to delay bargaining in the hope of discouraging support for 1199 SEIU.

For all the foregoing reasons, I find that an affirmative bargaining order consistent with the General Counsel's request is necessary to fully remedy the violations in this case.

The General Counsel also requests that I order a responsible management official read the notice to the assembled employees or to have a Board agent read the notice in the presence of a responsible management official (GC Br. at 78). I note that the Board has held that in determining whether additional remedies are necessary to fully dissipate the coercive effect of unlawful discharges and other unfair labor practices, it has broad discretion to fashion a remedy to fit the circumstances of each case. *Casino San Pablo*, 361 NLRB No. 148, slip op. at 6–7 (2014); *Excel Case Ready,* 334 NLRB 4, 4–5, (2001). In the instant case, I find that the unfair labor practices of the Respondent Sprain Brook justify the additional remedy of a notice reading. I agree with the General Counsel that Sprain Brook is a recidivist Respondent, having found that it was managing the facility at a time that the Board found violations of the Act, citing to *Sprain Brook Manor Nursing Home, LLC*, supra. The Respondent, as described above, also engaged in numerous violations of Section 8(a)(5) and (1) of the Act. In addition, the Respondent discharged Nicholson, Warren, and Nogueira, the primary supporters of 1199 SEIU, in violation of Section 8(a)(3) and (1) of the Act. The Board has held that the unlawful discharges of union supporters are highly coercive. *Excel Case Ready*, supra at 5.

I find that a public reading of the remedial notice is appropriate here. The Respondent's violations of the Act are sufficiently serious and widespread such that a reading of the notice is necessary to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices. Accordingly, I will require the attached notice to the read publicly by the Respondent's representative or by a Board agent in the presence of the Respondent's representative.

Finally, in light of the serious, extensive and pervasive nature of the unfair labor practices found to have been committed by Respondent Sprain Brook, it is recommended that a broad cease and desist order be issued. *Hickmott Foods*, 242 NLRB 1357 (1979); *Evergreen America Corp*., 348 NLRB 178 (2006), at 264; *Remington Lodging*, supra.

ORDER

On these findings of facts and conclusions of law and on the entire record, I issue the following recommended[71]

A. The Respondent Sprain Brook, as a successor to Sprain Brook Manor Nursing Home, LLC, shall

1. Cease and desist from

[71] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Refusing to bargain collectively with 1199 SEIU United Healthcare Workers East, as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining units (the units) concerning wages, hours, and other terms and conditions of employment:

> All full-time and regular part-time and per-diem dietary aides and cooks employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.
>
> All full-time and regular part-time and per-diem housekeeping employees and laundry employees/assistants, employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.
>
> All full-time and regular part-time and per-diem licensed practical nurses, certified nurses' aides, and geriatric techs/activity aides, employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.

(b) Withdrawing recognition from 1199 SEIU as the exclusive collective-bargaining representative of the unit employees.

(c) Granting assistance to Local 713, International Brotherhood of Trade Unions (Respondent Union) and recognizing it as the exclusive collective-bargaining representative of the unit employees at a time when Local 713 IBOTU did not represent an unassisted and uncoerced majority of the employees in the unit, and when 1199 SEIU was the exclusive collective-bargaining representative of the unit employees.

(d) Applying the terms and conditions of employment of the collective-bargaining agreement between the Respondent Budget and Local 713 Agreement (Budget-Local 713), including its union-security provisions, to the unit employees at a time when the Local 713 did not represent an unassisted and uncoerced majority of the employees in the unit, and when 1199 SEIU was the exclusive collective-bargaining representative of the unit employees.

(e) Subcontracting unit work without first notifying 1199 SEIU and giving it a meaningful opportunity to bargain regarding the decision to subcontract unit work.

(f) Discharging unit employees without first notifying 1199 SEIU and giving it a meaningful opportunity to bargain regarding the decision to discharge unit employees.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(h) Threatening employees with discharge or other reprisals if the unit employees choose to be represented by 1199 SEIU, their exclusive collective-bargaining representative.

(i) Discharging or refusing to offer employment to individuals because of their union or protected concerted activity.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from Local 713 IBOTU as the exclusive collective-bargaining representative of the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

(b) Refrain from applying the terms and conditions of employment of a collective-bargaining agreement with Local 713, including its union-security provisions, to the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

(c) Rescind the unlawful contract arrangements with Respondents Pinnacle and Budget and restore the status quo ante to ensure meaningful bargaining.

(d) Recognize and, on request, bargain with 1199 SEIU as the exclusive collective-bargaining representative of the unit employees concerning wages, hours, and other terms and conditions of employment. Bargaining on request with 1199 SEIU shall be at a minimum of 15 hours per week until an agreement or lawful impasse is reached or until the parties agree to a respite in bargaining; and to prepare written bargaining progress reports every 15 days to the Regional Director, Region 2, and a copy of the report to the Union with an opportunity to reply.

(e) Notify 1199 SEIU in writing of all changes made to the unit employees' terms and conditions of employment on and after September 12, 2012, and, on request of 1199 SEIU, rescind any or all changes and restore terms and conditions of employment retroactively to September 12, 2012.

(f) Make the unit employees whole, with interest, for any losses sustained due to the unlawfully imposed changes in wages, hours, benefits, and other terms and conditions of employment in the manner set forth in the remedy section of this decision.

(g) Within 14 days from the date of this Order, offer full reinstatement to all employees discharge from Sprain Brook on September 12, 2012, and not reemployed by Sprain Brook, to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(h) Make whole all employees discharged from Sprain Brook on September 12, 2012, and jointly reemployed by Sprain Brook and the Respondent contractors for any loss of earnings and other employee benefits.

(i) Make whole all employees discharge from Sprain Brook on September 12, 2012, and not reemployed by the Respondent contractors for any loss of earnings and other benefits suffered as a result their unlawful discharge, in the manner set forth in the remedy section of this decision.

(j) Compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum, and file with the Regional Director for Region 2, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(k) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and, within 3 days thereafter, notify the affected employees in writing that this has been done and that the unlawful discharges will not be used against them in any way.

(l) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(m) Jointly and severally with the Local 713, reimburse all unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the Budget-Local 713 Agreement, with interest.

(n) Within 14 days after service by the Region, post at its facility in Scarsdale, New York a copy of the attached notice marked “Appendix A.” Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by Respondent Sprain Brook’s authorized representative, shall be posted by Respondent Sprain Brook and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent Sprain Brook customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent Sprain Brook to ensure that the notices are not altered, defaced, or covered by any other material.

If Respondent Sprain Brook has gone out of business or closed the facility involved in this proceeding, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent Sprain Brook at its Scarsdale, New York facility at any time since June 15, 2009.

(o) Within 14 days after service by the Region, post at the same places and under the same conditions as in the preceding subparagraph signed copies of the Respondent Union's notice to members and employees marked “Appendix F.”

(p) Furnish the Regional Director with signed copies of Respondent Sprain Brook’s notice to employees marked “Appendix A” for posting by the Respondent Union at its facilities where notices to members and employees are customarily posted. Copies of the notice, to be furnished by the Regional Director, shall be signed and returned to the Regional Director promptly.

(q) Within 21 days after service by the Region, file with the Regional Director for Region 2, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Sprain Brook has taken to comply.

B. The Respondent Sprain Brook, Respondent Pinnacle, and Respondent Budget, as joint employers, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with 1199 SEIU United Healthcare Workers East, as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit (the unit) concerning wages, hours, and other terms and conditions of employment:

All full-time and regular part-time and per-diem dietary aides and cooks employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but

excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.

(b) Withdrawing recognition from 1199 SEIU as the exclusive collective-bargaining representative of the unit employees.

(c) Granting assistance to Local 713, International Brotherhood of Trade Unions (Respondent Union) and recognizing it as the exclusive collective-bargaining representative of the unit employees at a time when Local 713 IBOTU did not represent an unassisted and uncoerced majority of the employees in the unit, and when 1199 SEIU was the exclusive collective-bargaining representative of the unit employees.

(d) Applying the terms and conditions of employment of the collective-bargaining agreement between the Respondent Budget and Local 713 (Budget-Local 713) Agreement, including its union-security provisions, to the unit employees at a time when the Local 713 did not represent an unassisted and uncoerced majority of the employees in the unit, and when 1199 SEIU was the exclusive collective-bargaining representative of the unit employees.

(e) Discharging unit employees without first notifying 1199 SEIU and giving it a meaningful opportunity to bargain regarding the decision to discharge unit employees.

(f) Bypassing 1199 SEIU and directly offering unit employees continued employment in the unit on the basis of terms and conditions of employment different from those enjoyed under predecessor Sprain Brook and on condition that they be represented by Local 713.

(g) Altering the unit employees' terms and conditions of employment without first notifying 1199 SEIU and bargaining to agreement or impasse regarding such changes in the wages, hours, and working conditions of the unit employees.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(i) Threatening employees with discharge or other reprisals if the unit employees choose to be represented by 1199 SEIU, their exclusive collective-bargaining representative.

(j) Discharging or refusing to offer employment to individuals because of their union or protected concerted activity.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from Local 713 IBOTU as the exclusive collective-bargaining representative of the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

(b) Refrain from applying the terms and conditions of employment of a collective-bargaining agreement with Local 713, including its union-security provisions, to the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

(c) Recognize and, on request, bargain with 1199 SEIU as the exclusive collective-bargaining representative of the unit employees concerning wages, hours, and other terms and conditions of employment.

(d) Notify 1199 SEIU in writing of all changes made to the unit employees' terms and conditions of employment on and after September 12, 2012, and, on request of 1199 SEIU, rescind any or all changes and restore terms and conditions of employment retroactively to September 12, 2012.

(e) Make the unit employees whole, with interest, for any losses sustained due to the unlawfully imposed changes in wages, hours, benefits, and other terms and conditions of employment in the manner set forth in the remedy section of this decision.

(f) Make whole all unit employees discharged since September 12, 2012, for any loss of earnings and other benefits suffered as a result their unlawful discharge, in the manner set forth in the remedy section of this decision.

(g) Compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum, and file with the Regional Director for Region 2, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(h) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and, within 3 days thereafter, notify the affected employees in writing that this has been done and that the unlawful discharges will not be used against them in any way.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(j) Jointly and severally with the Local 713, reimburse all unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the Budget-Local 713 Agreement, with interest.

(k) Within 14 days after service by the Region, post at the Respondent Sprain Brook's facility in Scarsdale, New York a copy of the attached notice marked "Appendix B." Copies of the notice, on forms provided by the Regional Director for Region 2, after jointly signed by the authorized representatives of Respondents Sprain Brook, Pinnacle, and Budget shall be posted by Respondent Sprain Brook and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent Sprain Brook customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent Sprain Brook to ensure that the notices are not altered, defaced, or covered by any other material.

If Respondent Sprain Brook has gone out of business or closed the facility involved in this proceeding, the Respondents Sprain Brook, Pinnacle, and Budget shall jointly duplicate and mail, at their own expense, a copy of the notice to all current and former unit employees employed by Respondent Sprain Brook at its Scarsdale, New York facility at any time since September 12, 2012.

(l) Within 21 days after service by the Region, file with the Regional Director for Region 2, a sworn certification of responsible officials on a form provided by the Region attesting to the steps that Respondents Sprain Brook, Pinnacle, and Budget have taken to comply.

C. The Respondent Sprain Brook and Respondent Budget, as joint employers, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with 1199 SEIU United Healthcare Workers East, as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining units (the unit) concerning wages, hours, and other terms and conditions of employment:

> All full-time and regular part-time and per-diem licensed practical nurses, certified nurses' aides, and geriatric techs/activity aides, employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.

(b) Withdrawing recognition from 1199 SEIU as the exclusive collective-bargaining representative of the unit employees.

(c) Granting assistance to Local 713, International Brotherhood of Trade Unions (Respondent Union) and recognizing it as the exclusive collective-bargaining representative of the unit employees at a time when Local 713 IBOTU did not represent an unassisted and uncoerced majority of the employees in the unit, and when 1199 SEIU was the exclusive collective-bargaining representative of the unit employees.

(d) Applying the terms and conditions of employment of the collective-bargaining agreement between the Respondent Budget and Local 713 IBOTU (Budget-Local 713) Agreement, including its union-security provisions, to the unit employees at a time when the Local 713 did not represent an unassisted and uncoerced majority of the employees in the unit, and when 1199 SEIU was the exclusive collective-bargaining representative of the unit employees.

(e) Bypassing 1199 SEIU and directly offering unit employees continued employment in the unit on the basis of terms and conditions of employment different from those enjoyed under predecessor Sprain Brook and on condition that they be represented by Local 713.

(f) Altering the unit employees' terms and conditions of employment without first notifying 1199 SEIU and bargaining to agreement or impasse regarding such changes in the wages, hours, and working conditions of the unit employees.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(h) Threatening employees with discharge or other reprisals if the unit employees choose to be represented by 1199 SEIU, their exclusive collective-bargaining representative.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from Local 713 IBOTU as the exclusive collective-bargaining representative of the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

(b) Refrain from applying the terms and conditions of employment of a collective-bargaining agreement with Local 713, including its union-security provisions, to the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

(c) Recognize and, on request, bargain with 1199 SEIU as the exclusive collective-bargaining representative of the unit employees concerning wages, hours, and other terms and conditions of employment.

(d) Notify 1199 SEIU in writing of all changes made to the unit employees' terms and conditions of employment on and after September 12, 2012, and, on request of 1199 SEIU, rescind any or all changes and restore terms and conditions of employment retroactively to September 12, 2012.

(e) Make the unit employees whole, with interest, for any losses sustained due to the unlawfully imposed changes in wages, hours, benefits, and other terms and conditions of employment in the manner set forth in the remedy section of this decision.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Jointly and severally with the Local 713, reimburse all unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the Budget-Local 713 Agreement, with interest.

(h) Within 14 days after service by the Region, post at the Respondent Sprain Brook's facility in Scarsdale, New York a copy of the attached notice marked "Appendix C." Copies of the notice, on forms provided by the Regional Director for Region 2, after being jointly signed by the authorized representatives of Respondents Sprain Brook and Budget, shall be posted by Respondent Sprain Brook and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent Sprain Brook customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent Sprain Brook to ensure that the notices are not altered, defaced, or covered by any other material.

If Respondent Sprain Brook has gone out of business or closed the facility involved in this proceeding, Respondent Sprain Brook and Budget shall jointly duplicate and mail, at their own expense, a copy of the notice to all current and former employees employed by Respondent Sprain Brook at its Scarsdale, New York facility at any time since September 12, 2012.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 2, a sworn certification of responsible officials on a form provided by the Region attesting to the steps that the Respondents Sprain Brook and Budget have taken to comply.

D. The Respondent Budget, as a successor to Commercial Building Maintenance Corp., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with 1199 SEIU United Healthcare Workers East, as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining units (the unit) concerning wages, hours, and other terms and conditions of employment:

> All full-time and regular part-time and per-diem housekeeping employees and laundry employees/assistants, employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.

(b) Withdrawing recognition from 1199 SEIU as the exclusive collective-bargaining representative of the unit employees.

(c) Granting assistance to Local 713, International Brotherhood of Trade Unions (Respondent Union) and recognizing it as the exclusive collective-bargaining representative of the unit employees at a time when Local 713 IBOTU did not represent an unassisted and uncoerced majority of the employees in the unit, and when 1199 SEIU was the exclusive collective-bargaining representative of the unit employees.

(d) Applying the terms and conditions of employment of the collective-bargaining agreement between the Respondent Budget and Local 713 IBOTU (Budget-Local 713) Agreement, including its union-security provisions, to the unit employees at a time when the Local 713 did not represent an unassisted and uncoerced majority of the employees in the unit, and when 1199 SEIU was the exclusive collective-bargaining representative of the unit employees.

(e) Bypassing 1199 SEIU and directly offering unit employees continued employment in the unit on the basis of terms and conditions of employment different from those enjoyed under predecessor Sprain Brook and on condition that they be represented by Local 713.

(f) Altering the unit employees' terms and conditions of employment without first notifying 1199 SEIU and bargaining to agreement or impasse regarding such changes in the wages, hours, and working conditions of the unit employees.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(h) Threatening employees with discharge or other reprisals if the unit employees choose to be represented by 1199 SEIU, their exclusive collective-bargaining representative.

(i) Discharging or refusing to offer employment to individuals because of their union or protected concerted activity.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from Local 713 IBOTU as the exclusive collective-bargaining representative of the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

(b) Refrain from applying the terms and conditions of employment of a collective-bargaining agreement with Local 713, including its union-security provisions, to the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

(c) Recognize and, on request, bargain with 1199 SEIU as the exclusive collective-bargaining representative of the unit employees concerning wages, hours, and other terms and conditions of employment.

(d) Notify 1199 SEIU in writing of all changes made to the unit employees' terms and conditions of employment on and after October 1, 2014, and, on request of 1199 SEIU, rescind any or all changes and restore terms and conditions of employment retroactively to October 1, 2014.

(e) Make the unit employees whole, with interest, for any losses sustained due to the unlawfully imposed changes in wages, hours, benefits, and other terms and conditions of employment in the manner set forth in the remedy section of this decision.

(f) Make whole all unit employees discharged since October 1, 2014, for any loss of earnings and other benefits suffered as a result their unlawful discharge, in the manner set forth in the remedy section of this decision.

(g) Compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum, and file with the Regional Director for Region 2, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(h) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and, within 3 days thereafter, notify the affected employees in writing that this has been done and that the unlawful discharges will not be used against them in any way.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(j) Jointly and severally with the Local 713, reimburse all unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the Budget-Local 713 Agreement, with interest.

(k) Within 14 days after service by the Region, post at the Respondent Sprain Brook's facility in Scarsdale, New York a copy of the attached notice marked "Appendix D." Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the authorized representative of Respondent Budget, shall be posted by Respondent Sprain Brook and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent Sprain Brook customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent Sprain Brook to ensure that the notices are not altered, defaced, or covered by any other material.

If Respondent Sprain Brook has gone out of business or closed the facility involved in this proceeding, Respondent Budget shall duplicate and mail, at its own expense, a copy of the notice to all current and former unit employees employed by Respondent Sprain Brook at its Scarsdale, New York facility at any time since October 1, 2014.

(l) Within 21 days after service by the Region, file with the Regional Director for Region 2, a sworn certification of responsible officials on a form provided by the Region attesting to the steps that the Respondents Sprain Brook and Budget have taken to comply.

E. The Respondent Commercial Building Maintenance Corp. (CBM), as a successor to non-party Confidence, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively, on request, with 1199 SEIU United Healthcare Workers East, as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit (the unit) concerning wages, hours, and other terms and conditions of employment:

> All full-time and regular part-time and per–diem housekeeping employees and laundry employees/assistant, employed by the Employer at the facility located at 77 Jackson Avenue, Scarsdale, New York but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.

(b) Withdrawing recognition from 1199 SEIU as the exclusive collective-bargaining representative of the unit employees.

(c) Altering the unit employees' terms and conditions of employment without first notifying 1199 SEIU and bargaining to agreement or impasse regarding such changes in the wages, hours, and working conditions of the unit employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with 1199 SEIU as the exclusive collective-bargaining representative of the unit employees concerning wages, hours, and other terms and conditions of employment.

(b) Notify 1199 SEIU in writing of all changes made to the unit employees' terms and conditions of employment on and after July 1, 2013, and, on request of 1199 SEIU, rescind any or all changes and restore terms and conditions of employment retroactively to July 1, 2013.

(c) Make the unit employees whole, with interest, for any losses sustained due to the unlawfully imposed changes in wages, hours, benefits, and other terms and conditions of employment in the manner set forth in the remedy section of this decision.

(d) Compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum, and file with the Regional Director for Region 2, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at the Respondent Sprain Brook's facility in Scarsdale, New York, a copy of the attached notice marked "Appendix E." Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by Respondent CBM' s authorized representative, shall be posted by the Respondent Sprain Brook and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if Respondent Sprain Brook customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent Sprain Brook to ensure that the notices are not altered, defaced, or covered by any other material.

If Respondent Sprain Brook has gone out of business or closed the facility involved in this proceeding, Respondent CBM shall duplicate and mail, at its own expense, a copy of the notice to all current and former unit employees employed by Respondent CBM at the Sprain Brook Scarsdale, New York facility at any time since July 1, 2013.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 2, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent CBM has taken to comply.

F. The Respondent Union, Local 713 International Brotherhood of Trade Unions, its officers, agents and representatives, shall

1. Cease and desist from

(a) Accepting assistance and recognition from Respondent Sprain Brook, Pinnacle and Budget as the exclusive collective bargaining representative of the employees in the units described below (the unit) at a time when the Respondent Union did not represent an uncoerced majority of the employees in the unit, and when 1199 SEIU was the exclusive collective bargaining representative of the employees in that unit:

(b) Maintaining and enforcing the Budget-Local 713 Agreement, or any extension, renewal, or modification thereof, including its union-security provisions, so as to cover the unit employees, unless and until it has been certified by the Board as the collective-bargaining representative of those employees.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Decline recognition as the exclusive collective bargaining representative of the unit employees, unless and until Local 713 IBOTU has been certified by the National Labor Relations Board as the exclusive representative of those employees.

(b) Jointly and severally with the Respondents Sprain Brook, Pinnacle and Budget, reimburse all present and former unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the Budget-Local 713 Agreement, with interest.

(c) Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount due under the terms of this Order.

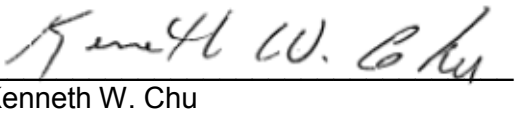
(d) Within 14 days after service by the Region, post at its headquarters and at its offices and meeting halls in Garden City, New York, copies of the attached notice marked "Appendix F."[72] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent Union customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 14 days after service by the Region, post at the same places and under the same conditions as in the preceding subparagraph signed copies of the Respondent Sprain Brook's notice to employees marked "Appendix A."

(f) Furnish the Regional Director with signed copies of the Respondent Union's notice to members and employees marked "Appendix F" for posting by the Respondent Sprain Brook at its facility where notices to employees are customarily posted. Copies of the notice be furnished by the Regional Director, shall be signed and returned to the Regional Director promptly.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 2, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Union has taken to comply

Dated: Washington D.C. April 29, 2016



Kenneth W. Chu
Administrative Law Judge

[72] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

To organize
To form, join, or assist a union
To bargain collectively through representatives of their own choice
To act together with other employees for your benefit and protection
To choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively, on request, with 1199 SEIU United Healthcare Workers East (1199 SEIU) as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit (the unit) concerning wages, hours, and other terms and conditions of employment:

All full-time and regular part-time and per-diem dietary aides and cooks; all full-time and regular part-time and per-diem housekeeping employees and laundry employees/assistants; all full-time and regular part-time and per-diem licensed practical nurses, certified nurses' aides, and geriatric techs/activity aides, employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.

WE WILL NOT withdraw recognition from 1199 SEIU as the exclusive collective-bargaining representative of the unit employees and thereafter fail and refuse to recognize 1199 SEIU as the exclusive collective bargaining representative of the unit employees.

WE WILL NOT change the unit employees' wages, hours, or other terms and conditions of employment without first notifying 1199 SEIU and giving it a meaningful opportunity to bargain about such changes to agreement or impasse regarding such changes in the wages, hours, and working conditions of the unit employees.

WE WILL NOT notify the unit employees that the unit employees will be discharged without first providing 1199 SEIU with notice and a meaningful opportunity to bargain regarding the decision to discharge unit employees.

WE WILL NOT subcontract unit work without first providing 1199 SEIU with notice and a meaningful opportunity to bargain regarding the decision to subcontract unit work.

WE WILL NOT discharge or otherwise discriminate against you for supporting 1199 SEIU United Healthcare Workers East, or any other labor organization.

WE WILL NOT threaten employees with discharge or other reprisals if the unit employees choose to be represented by 1199 SEIU, their exclusive collective-bargaining representative.

WE WILL NOT grant assistance to Local 713 International Brotherhood of Trade Unions (IBOTU) or recognize it as the exclusive collective-bargaining representative of the unit employees at a time when the IBOTU does not represent an unassisted and uncoerced majority of the employees in the unit, and when 1199 SEIU is the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT apply the terms and conditions of employment of our collective-bargaining agreement with IBOTU (the Budget-Local 713 Agreement), or any extensions, renewals, or modifications of that agreement, including its union-security provisions, to the unit employees unless and until the IBOTU has been certified by the National Labor Relations Board as the collective-bargaining representative of those employees.

WE WILL NOT promise our employees wage increases, medical benefits or other improvements in their terms and conditions of employment in order to induce them to sign authorization cards for or otherwise support Local 713.

WE WILL NOT discriminate against our employees in regard to their hire or tenure of employment in order to encourage membership in Local 713.

WE WILL NOT notify the unit employees that the unit employees will be discharged without first providing 1199 SEIU with notice and a meaningful opportunity to bargain regarding the decision to discharge unit employees.

WE WILL NOT threaten to discharge, discharge, or take any discipline against you for engaging in protected concerted activities.

WE WILL NOT in any manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and withhold all recognition from Local 713 IBOTU as the exclusive collective-bargaining representative of our employees in the unit described above, unless and until the Local 713 has been certified by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees.

WE WILL refrain from applying the terms and conditions of employment of a collective-bargaining agreement with Local 713, including its union-security provisions, to the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

WE WILL recognize and, on request, bargain with 1199 SEIU as the exclusive collective-bargaining representative of our employees in the unit described above concerning wages, hours, and other terms and conditions of employment.

WE WILL notify 1199 SEIU in writing of any changes made on and after September 12, 2012, in the rates of pay, hours of work, job benefits, and other terms and conditions of employment of the unit employees, and

WE WILL, on the 1199 SEIU's request, rescind any or all of our unlawfully imposed changes and restore the terms and conditions of employment that existed prior to September 12, 2012.

WE WILL make the unit employees whole, with interest, for any losses sustained due to our unlawfully imposed changes in wages, benefits, and other terms and conditions of employment.

WE WILL make Alvin Nicholson, Vernon Warren, and Clarisse Nogueira whole for any loss of earnings and other benefits resulting from their unlawful discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, offer full reinstatement to all unit employees discharged on and after September 12, 2012, from Sprain Brook Manor Rehab, LLC, to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole all unit employees discharged from Sprain Brook Manor Rehab, LLC on and after September 12, 2012, for any loss of earnings and other benefits suffered as a result of their unlawful discharge, less any net interim earnings, with interest.

WE WILL compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum, and WE WILL file a report with the Regional Director, for Region 2, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the September 12, 2012 discharge of the unit employees, and WE WILL, within 3 days thereafter, notify the affected employees in writing that this has been done and that we will not use the unlawful layoffs against them in any way.

WE WILL, jointly and severally with Local 713 IBOTU, reimburse all unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the Budget-Local 713 Agreement, with interest.

SPRAIN BROOK MANOR REHAB, LLC

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

26 Federal Plaza, Room 3614
New York, New York 10278
Hours of Operation: 8:30 a.m. to 5 p.m.
212-264-0300

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/02-CA-089480 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 212-264-0346.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

To organize
To form, join, or assist a union
To bargain collectively through representatives of their own choice
To act together with other employees for your benefit and protection
To choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively, on request, with 1199 SEIU United Healthcare Workers East (1199 SEIU) as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit (the unit) concerning wages, hours, and other terms and conditions of employment:

All full-time and regular part-time and per-diem dietary aides and cooks, employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.

WE WILL NOT withdraw recognition from 1199 SEIU as the exclusive collective-bargaining representative of the unit employees and thereafter fail and refuse to recognize 1199 SEIU as the exclusive collective bargaining representative of the unit employees.

WE WILL NOT bypass 1199 SEIU and directly offer unit employees continued employment in the unit on the basis of terms and conditions of employment different from those enjoyed and on condition that they be represented by Local 713.

WE WILL NOT change the unit employees' wages, hours, or other terms and conditions of employment without first notifying 1199 SEIU and giving it a meaningful opportunity to bargain about such changes to agreement or impasse regarding such changes in the wages, hours, and working conditions of the unit employees.

WE WILL NOT grant assistance to Local 713 International Brotherhood of Trade Unions (IBOTU) or recognize it as the exclusive collective-bargaining representative of the unit employees at a time when the IBOTU does not represent an unassisted and uncoerced majority of the employees in the unit, and when 1199 SEIU is the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT apply the terms and conditions of employment of our collective-bargaining agreement with IBOTU (the Budget-Local 713 Agreement), or any extensions, renewals, or modifications of that agreement, including its union-security provisions, to the unit employees unless and until the IBOTU has been certified by the National Labor Relations Board as the collective-bargaining representative of those employees.

WE WILL NOT promise our employees wage increases, medical benefits or other improvements in their terms and conditions of employment in order to induce them to sign authorization cards for or otherwise support Local 713.

WE WILL NOT discriminate against our employees in regard to their hire or tenure of employment in order to encourage membership in Local 713.

WE WILL NOT discharge or otherwise discriminate against you for supporting 1199 SEIU United Healthcare Workers East, or any other labor organization.

WE WILL NOT threaten employees with discharge or other reprisals if the unit employees choose to be represented by 1199 SEIU, their exclusive collective-bargaining representative.

WE WILL NOT threaten to discharge, discharge or take any discipline against you for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and withhold all recognition from Local 713 IBOTU as the exclusive collective-bargaining representative of our employees in the unit described above, unless and until the Local 713 has been certified by the National Labor Relations Board as the exclusive collective bargaining representative of those employees.

WE WILL refrain from applying the terms and conditions of employment of a collective-bargaining agreement with Local 713, including its union-security provisions, to the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

WE WILL recognize and, on request, bargain with 1199 SEIU as the exclusive collective-bargaining representative of our employees in the unit described above concerning wages, hours, and other terms and conditions of employment.

WE WILL notify 1199 SEIU in writing of any changes made on and after September 12, 2012, in the rates of pay, hours of work, job benefits, and other terms and conditions of employment of the unit employees, and

WE WILL, on the 1199 SEIU's request, rescind any or all of our unlawfully imposed changes and restore the terms and conditions of employment that existed prior to September 12, 2012.

WE WILL make the unit employees whole, with interest, for any losses sustained due to our unlawfully imposed changes in wages, benefits, and other terms and conditions of employment.

WE WILL make Alvin Nicholson and Vernon Warren whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, offer full reinstatement to Alvin Nicholson, Vernon Warren, and all unit employees unlawfully discharged on and after September 13, 2012, to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole all unit employees unlawfully discharged on or after September 13, 2012, for any loss of earnings and other benefits suffered as a result of their unlawful discharge, less any net interim earnings, with interest.

WE WILL compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum, and WE WILL file a report with the Regional Director, for Region 2, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the discharges of the unit employees, and WE WILL, within 3 days thereafter, notify the affected employees in writing that this has been done and that we will not use the unlawful layoffs against them in any way.

WE WILL, jointly and severally with Local 713 IBOTU, reimburse all unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the Budget-Local 713 Agreement, with interest.

SPRAIN BROOK MANOR REHAB, LLC, PINNACLE DIETARY INC., BUDGET SERVICES, INC., A JOINT EMPLOYER

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

26 Federal Plaza, Room 3614
New York, New York 10278
Hours of Operation: 8:30 a.m. to 5 p.m.
212-264-0300

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THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 212-264-0346.

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

To organize
To form, join, or assist a union
To bargain collectively through representatives of their own choice
To act together with other employees for your benefit and protection
To choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively, on request, with 1199 SEIU United Healthcare Workers East (1199 SEIU) as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit (the unit) concerning wages, hours, and other terms and conditions of employment:

All full-time and regular part-time and per-diem licensed practical nurses, certified nurses' aides, and geriatric techs/activity aides, employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.

WE WILL NOT withdraw recognition from 1199 SEIU as the exclusive collective-bargaining representative of the unit employees and thereafter fail and refuse to recognize 1199 SEIU as the exclusive collective bargaining representative of the unit employees.

WE WILL NOT bypass 1199 SEIU and directly offer unit employees continued employment in the unit on the basis of terms and conditions of employment different from those enjoyed and on condition that they be represented by Local 713.

WE WILL NOT change the unit employees' wages, hours, or other terms and conditions of employment without first notifying 1199 SEIU and giving it a meaningful opportunity to bargain about such changes to agreement or impasse regarding such changes in the wages, hours, and working conditions of the unit employees.

WE WILL NOT grant assistance to Local 713 International Brotherhood of Trade Unions (IBOTU) or recognize it as the exclusive collective-bargaining representative of the unit employees at a time when the IBOTU does not represent an unassisted and uncoerced majority of the employees in the unit, and when 1199 SEIU is the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT apply the terms and conditions of employment of our collective-bargaining agreement with IBOTU (the Budget-Local 713 Agreement), or any extensions, renewals, or modifications of that agreement, including its union-security provisions, to the unit employees unless and until the IBOTU has been certified by the National Labor Relations Board as the collective bargaining representative of those employees.

WE WILL NOT promise our employees wage increases, medical benefits or other improvements in their terms and conditions of employment in order to induce them to sign authorization cards for or otherwise support Local 713.

WE WILL NOT discriminate against our employees in regard to their hire or tenure of employment in order to encourage membership in Local 713.

WE WILL NOT threaten unit employees with discharge, reprisals or otherwise discriminate against you for supporting 1199 SEIU or if unit employees choose to be represented by 1199 SEIU, their exclusive collective-bargaining representative.

WE WILL NOT threaten to discharge, discharge, or take any discipline against you for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and withhold all recognition from Local 713 IBOTU as the exclusive collective-bargaining representative of our employees in the unit described above, unless and until the Local 713 has been certified by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees.

WE WILL refrain from applying the terms and conditions of employment of a collective-bargaining agreement with Local 713, including its union-security provisions, to the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

WE WILL recognize and, on request, bargain with 1199 SEIU as the exclusive collective-bargaining representative of our employees in the unit described above concerning wages, hours, and other terms and conditions of employment.

WE WILL notify 1199 SEIU in writing of any changes made on and after September 12, 2012, in the rates of pay, hours of work, job benefits, and other terms and conditions of employment of the unit employees, and

WE WILL, on the 1199 SEIU's request, rescind any or all of our unlawfully imposed changes and restore the terms and conditions of employment that existed prior to September 11, 2012.

WE WILL make the unit employees whole, with interest, for any losses sustained due to our unlawfully imposed changes in wages, benefits, and other terms and conditions of employment.

WE WILL, jointly and severally with Local 713 IBOTU, reimburse all unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the Budget-Local 713 Agreement, with interest.

SPRAIN BROOK MANOR REHAB, LLC AND BUDGET SERVICES, INC. A JOINT EMPLOYER

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

26 Federal Plaza, Room 3614
New York, New York 10278
Hours of Operation: 8:30 a.m. to 5 p.m.
212-264-0300

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/02-CA-089480 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 212-264-0346.

APPENDIX D

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

To organize
To form, join, or assist a union
To bargain collectively through representatives of their own choice
To act together with other employees for your benefit and protection
To choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively, on request, with 1199 SEIU United Healthcare Workers East (1199 SEIU) as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit (the unit) concerning wages, hours, and other terms and conditions of employment:

All full-time and regular part-time and per-diem housekeeping employees and laundry employees/assistants, employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.

WE WILL NOT withdraw recognition from 1199 SEIU as the exclusive collective-bargaining representative of the unit employees and thereafter fail and refuse to recognize 1199 SEIU as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT change the unit employees' wages, hours, or other terms and conditions of employment without first notifying 1199 SEIU and giving it a meaningful opportunity to bargain about such changes to agreement or impasse regarding such changes in the wages, hours, and working conditions of the unit employees.

WE WILL NOT grant assistance to Local 713 International Brotherhood of Trade Unions (IBOTU) or recognize it as the exclusive collective-bargaining representative of the unit employees at a time when the IBOTU does not represent an unassisted and uncoerced majority of the employees in the unit, and when 1199 SEIU is the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT apply the terms and conditions of employment of our collective-bargaining agreement with IBOTU (the Budget-Local 713 Agreement), or any extensions, renewals, or modifications of that agreement, including its union-security provisions, to the unit employees unless and until the IBOTU has been certified by the National Labor Relations Board as the collective-bargaining representative of those employees.

WE WILL NOT promise our employees wage increases, medical benefits or other improvements in their terms and conditions of employment in order to induce them to sign authorization cards for or otherwise support Local 713.

WE WILL NOT discriminate against our employees in regard to their hire or tenure of employment in order to encourage membership in Local 713.

WE WILL NOT threaten unit employees with discharge, reprisals or otherwise discriminate against you for supporting 1199 SEIU or if unit employees choose to be represented by 1199 SEIU, their exclusive collective-bargaining representative.

WE WILL NOT threaten to discharge, discharge or take any discipline against you for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and withhold all recognition from Local 713 IBOTU as the exclusive collective-bargaining representative of our employees in the unit described above, unless and until the Local 713 has been certified by the National Labor Relations Board as the exclusive collective bargaining representative of those employees.

WE WILL, within 14 days from the date of the Board's Order, offer full reinstatement to all unit employees unlawfully discharged on and after October 1, 2014, to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole all unit employees unlawfully discharged on and after October 1, 2014, for any loss of earnings and other benefits suffered as a result of their unlawful discharge, less any net interim earnings, with interest.

WE WILL compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum, and WE WILL file a report with the Regional Director, for Region 2, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the discharge of the unit employees, and WE WILL, within 3 days thereafter, notify the affected employees in writing that this has been done and that we will not use the unlawful layoffs against them in any way.

WE WILL refrain from applying the terms and conditions of employment of a collective-bargaining agreement with Local 713, including its union-security provisions, to the unit employees, unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

WE WILL recognize and, on request, bargain with 1199 SEIU as the exclusive collective-bargaining representative of our employees in the unit described above concerning wages, hours, and other terms and conditions of employment.

BUDGET SERVICES, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

26 Federal Plaza, Room 3614
New York, New York 10278
Hours of Operation: 8:30 a.m. to 5 p.m.
212-264-0300

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/02-CA-089480 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

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THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 212-264-0346.

APPENDIX E

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

To organize
To form, join, or assist a union
To bargain collectively through representatives of their own choice
To act together with other employees for your benefit and protection
To choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively, on request, with 1199 SEIU United Healthcare Workers East (1199 SEIU) as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit (the unit) concerning wages, hours, and other terms and conditions of employment:

All full-time and regular part-time and per-diem housekeeping employees and laundry employees/assistants, employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.

WE WILL NOT withdraw recognition from 1199 SEIU as the exclusive collective-bargaining representative of the unit employees and thereafter fail and refuse to recognize 1199 SEIU as the exclusive collective bargaining representative of the unit employees.

WE WILL NOT change the unit employees' wages, hours, or other terms and conditions of employment without first notifying 1199 SEIU and giving it a meaningful opportunity to bargain about such changes to agreement or impasse regarding such changes in the wages, hours, and working conditions of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with 1199 SEIU as the exclusive collective-bargaining representative of our employees in the unit described above concerning wages, hours, and other terms and conditions of employment.

WE WILL notify 1199 SEIU in writing of any changes made on and after July 1, 2013, in the rates of pay, hours of work, job benefits, and other terms and conditions of employment of the unit employees, and

WE WILL, on the 1199 SEIU's request, rescind any or all of our unlawfully imposed changes and restore the terms and conditions of employment that existed prior to July 1, 2013.

WE WILL make the unit employees whole, with interest, for any losses sustained due to our unlawfully imposed changes in wages, benefits, and other terms and conditions of employment.

COMMERCIAL BUILDING MAINTENANCE CORP.

(Employer)

Dated _____ By _____

(Representative) (Title)

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New York, New York 10278
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212-264-0300

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APPENDIX F

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT accept assistance or recognition from Sprain Brook Manor Rehab, LLC, Pinnacle Dietary Inc. or Budget Services, Inc. as the exclusive collective-bargaining representative of the employees in the following appropriate unit (the unit), at a time when we do not represent an uncoerced majority of the employees in the unit, and when 1199 SEIU United Healthcare Workers East is the exclusive collective-bargaining representative of those employees:

> All full-time and regular part-time and per-diem dietary aides and cooks; all full-time and regular part-time and per-diem housekeeping employees and laundry employees/assistants; all full-time and regular part-time and per-diem licensed practical nurses, certified nurses' aides, and geriatric techs/activity aides, employed by the employer at the facility located at 77 Jackson Avenue, Scarsdale, New York, but excluding all other employees, including office clerical employees, managers and guards, professional employees and supervisors as defined by the Act.

WE WILL NOT maintain or enforce our collective bargaining agreement with Budget Services (the Budget-Local 713 Agreement), or any modifications, renewals, or extensions of that agreement, including its union-security provisions, so as to cover the unit employees, unless and until we have been certified by the National Labor Relations Board as the collective-bargaining representative of those employees.

WE WILL NOT restrain or coerce you in the exercise of your right to refrain from protected union activity by soliciting your membership and threatening employees with adverse consequences if they refuse to join Local 713 International Brotherhood of Trade Unions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL decline recognition as the exclusive collective-bargaining representative of Sprain Brook employees in the unit described above, unless and until we have been certified by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees.

WE WILL, jointly and severally with the Respondent Sprain Brook, Pinnacle and Budget, reimburse all present and former employees in the unit described above for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the Budget-Local 713 Agreement, with interest.

LOCAL 713, INTERNATIONAL BROTHERHOOD OF TRADE UNIONS

(Employer)

Dated _____ By _____

(Representative) (Title)

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Hours of Operation: 8:30 a.m. to 5 p.m.
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